

# **Forced Labour and Migration to the UK**

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*Study prepared by COMPAS in collaboration with the Trades Union Congress*

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## FOREWORD

Over recent years, there have been many reports in the media of the extreme forms of exploitation that some migrant workers face in Britain. The TUC has published several accounts itself. This report differs in that the researchers have put this shameful phenomenon into a bigger picture.

They show that the practices used by a minority of employers fall under the internationally agreed definitions of forced labour, which most people would assume had been banished from Britain long ago. Far from being restricted to the extreme fringes of the economy, forced labour can be found at the base of key industries, and goes far beyond the agricultural and sex work with which it is normally associated. The authors suggest that the conditions for forced labour are created by employer demand for ultra-flexible labour. From the TUC's point of view, this is made worse both by the low level of protection that exists in British law for some categories of workers – agency workers in particular – and difficulties in enforcing those rights that do exist.

As the researchers found people working with authorisation, such as work permit holders, can find themselves without the means to assert fundamental rights – to be paid what they have been promised, or not to have their passports withheld, for example. For those working without permission, the situation is much worse, as their fear of the authorities obliges them to accept oppressive exploitation. The greater the hostility that migrant workers fear they may encounter, whether from the media, officialdom or politicians, the greater their vulnerability. Expressing or encouraging hostility to the presence of migrants, performing vital roles within our economy, only diminishes their capacity to resist exploitation and plays into the hands of the shady employers getting rich on the back of forced labour.

Tolerating forced labour is not an option for the trade union movement. We accept our responsibility to organise migrant workers and in doing so, enable them to defend themselves. It is in the interest of everyone at work to maintain decent minimum standards in every workplace, and trade unions can only benefit from reflecting more accurately the diversity to be found in the modern workforce.

But to do our job, we need the right tools. As this report reveals even the rights that do exist can be difficult to enforce. Many people working perfectly legally cannot in practice enforce their rights, and those whose status may be in doubt are open to the worst kinds of exploitation, yet the employers who take advantage of this seem almost immune from prosecution. A simple immigration control approach does nothing to reduce exploitation as unscrupulous employers simply take on new workers and exploit them in turn. Only when migrant workers can confidently claim their rights, including in particular the right to join and participate in a trade union, will the demand for vulnerable workers drop. And when everyone at work enjoys minimum standards, there is much less scope for any employer to sow divisions between groups of workers in order to drive down wages and undermine collective agreements.

Migrant workers who enter to work for a specified employer cannot take unfair dismissal claims in Tribunals without risking finding themselves in breach of immigration rules. In other words, claiming their rights could mean leaving the country (which itself could prevent them from pursuing a claim). Someone working outside the immigration rules (for example an overseas

student working for more than 20 hours per week) is likely to find that they cannot make a claim for unpaid wages because their employment contract is not judged to be legal. It is far from clear how employers can be prevented from confiscating passports and identity papers. These gaps in protection contribute to the forced labour practices identified in this report.

The conclusions of the report reflect most of these concerns. Ideas such as extending (and improving) the protections available to victims of trafficking to those subjected to forced labour, and of giving all workers access to redress for losses and damages imposed by rogue employers would do much to aid the fight against forced labour. This is a struggle that can only be fought alongside the workers affected. Interventions from the outside that do not engage migrants and their organisations (including of course their unions) cannot hope to succeed.

The TUC is very grateful for the work put in by the authors Bridget Anderson and Ben Rogaly. They have produced a valuable report at a time when it is most needed. The TUC would also like to thank staff at the ILO's Special Action Programme to Combat Forced Labour for their assistance and advice, and the many migrant workers, advisors, solicitors, researchers and trade unionists who assisted the authors in gathering the information included in this report. The content and conclusions of the report, however, are the responsibility of the authors and the TUC.

Finally, this report is published a year after the tragedy in Morecambe Bay, when so many migrant workers needlessly died. If we are to avoid a repetition, we need to consider how the problems identified can be addressed to the advantage of the workforce as a whole, and how we can drive forced labour out of Britain for good.

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## **Acknowledgements**

This report was produced thanks to the contributions of many people. We would particularly acknowledge those who consented to tell of their own experiences, often under very difficult circumstances.

Thanks to Stefanie Grant for researching and writing the section on concepts, standards and UK approaches, to Sue Conlan conducted interviews with UK legal practitioners and Citizens Advice Bureaux, and to Patience Mususa who reviewed newspapers and magazines and contributed particularly to the discussion on accommodation.

The work of our interviewers and those who helped introduce us to workers was invaluable. Particular thanks to Sofi Taylor, Huiling, Irina Khirivskaya, Elvina Quaison, Krzysztof Frajs.

We gratefully acknowledge our colleagues, Stephanie Barrientos, Jennifer Frances, Richard Black, Lindsey Napier and Emma Newcombe. Thanks to Sarah Spencer and Martin Ruhs for permission to use data collected from the accession project, and to Rob Lemkin of Old Street Films for permission to use interview material prepared for Channel 4 News.

## INTRODUCTION

The disaster in which 21 Chinese migrants died picking cockles in the treacherous tides off Morecambe Bay in February 2004 has led to increased public awareness of the abusive employment relations and poor living conditions of many migrants working in the United Kingdom. Journalists have revealed starvation wages and appalling conditions across the UK from Burnham-on-Sea to Fraserburgh. The sectors most commonly investigated by the press are forced prostitution and commercial sex, but abuses have been found in cheap takeaways and expensive restaurants, mushroom picking, bakeries, private homes, fishing vessels, and all-night stores. Press coverage of these issues can adopt a very mixed tone. On the one hand the migrants involved are depicted as ‘victims’ working in Dickensian conditions; the employers and ubiquitous gangmasters as morally reprehensible and, more often than not, foreign. On the other hand migrants are also frequently portrayed as persons benefiting from undeserved opportunities.

The present Government has attempted to inject some pragmatism into the treatment of migrant workers through its “managed migration” policies. The United Kingdom needs migrants “to prosper in the world economy” and to fill vacancies at both high and low skilled ends of the economy (CM 5387). To this end it has reformed and expanded the work permit system, introduced a pilot short term “low skilled” permit, and modified existing arrangements for agricultural workers and “working holidaymakers” to reflect employer demand for labour. This is presented as beneficial for migrants with a legal status, and also good for business<sup>1</sup> It is good for the state too, as recognition of the demand for labour and the opening of legal channels brings orderly, controllable migration. Asylum flows on the other hand are inherently unpredictable, and firm measures have been taken to restrict access of asylum seekers to the United Kingdom (Flynn 2004). A liberalization of policies relating to economic migration has gone together with reassurances that the government will crack down hard on the “villains”, not just “bogus asylum seekers” but also “illegal immigrants”, “traffickers” and others seeking to abuse the system.

### **Forced labour and trafficking: definitions and approaches**

This study, very much a novel one for the United Kingdom, has two important objectives. First, it examines the extent to which coercive practices of recruitment and employment (encapsulated by the term *forced labour*) are being used to exercise control over migrant workers and also to derive unfair advantage from their labour exploitation. Second it examines how a focus on forced labour can lead to improved law enforcement against offenders, and also better protection of the victims against abusive treatment.

These are important concerns, which are receiving more attention throughout the European Union and the wealthier industrialized countries. There are common problems, when for demographic and other reasons the countries have a growing need for migrant labour to do jobs for which there are serious labour shortages, at least given existing wages and conditions. The jobs tend to be poorly paid, difficult and sometimes dangerous, and often of a seasonal nature. The migrants are often engaged through a bewildering array of subcontracting chains and agents, all of which can make it difficult to claim and safeguard their basic human and labour rights. In extreme cases,

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<sup>1</sup> Tony Blair, speech on immigration policy, April 27<sup>th</sup> 2004  
<http://politics.guardian.co.uk/speeches/story/0,11126,1204464,00.html>

their treatment can amount to the forced labour practices which are the main concern of the present study.

Forced labour is not considered as something that happens in the United Kingdom, but rather as a term chiefly applied to situations in states such as Myanmar and Sudan. Thus the conditions and relations described in this report would not normally be described as instances of “forced labour”, but would rather be presented as instances of “trafficking”. This term has become increasingly popular, and is widely used in both the media and in policy circles. However, to count as trafficking in a legal sense, forced labour is implicit. This is the case both within the international definition of trafficking adopted by the United Nations General Assembly in November 2000<sup>2</sup>, and that given by the UK government. The latter is set out in the Asylum and Immigration (Treatment of Claimants etc) Bill 2004, which declares a person who facilitates travel to or within the UK is guilty of the criminal offence of trafficking if an individual so facilitated:

“is the victim of behaviour that contravenes Article 4 of the Human Rights Convention<sup>3</sup>  
(**slavery and forced labour**)”

Or

“is subjected to **force, threats or deception** designed to induce him –

- (i) to provide services of any kind
- (ii) to provide another person with benefits of any kind, or
- (iii) to enable another person to acquire benefits of any kind

It is significant that the above provision is to be found in an asylum and immigration bill, suggesting that the primary concern is with the movement and its facilitation as constituting the kernel of the crime of trafficking, rather the forced labour aspects or abusive employment relations. This highlights a limitation of the *trafficking* discourse and legislation, which can treat disasters like Morecambe Bay as essentially relating to immigration rather than employment issues. There is a serious confusion between “illegal immigration” and trafficking, with migrants who are found to be working in breach of immigration conditions frequently described as “trafficked” solely on the basis of their status. Moreover one does not have to be “illegal” or be working without state permission, to be “trafficked”, and as we will see migrants who are working with permits may be subject to forced labour and illegal deductions. So whilst focusing on immigration, “trafficking” diverts attention away from the key question of how immigration

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<sup>2</sup> Definition adopted for the UN Convention Against Transnational Organised Crime:

a) The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, **forced labour or services, slavery or practices similar to slavery, servitude** or the removal of organs;

a) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

<sup>3</sup> European Convention on Human Rights



status (whether irregular or tied by a permit to an employer) contributes to vulnerability to abusive employment relations. Perversely this means that immigration controls can be presented as a solution to human rights abuses.

*“Illegal working is a modern day slave trade run by organized criminals. It exploits vulnerable people, undermines fair business competition and the minimum wage... The Government is taking action – increasing the number of enforcement operations, enhancing the powers of immigration officers to raid business premises and investing in multi-agency taskforce Reflex to disrupt the people-smuggling gangs behind the trade.”*  
Home Office Press Release “New Measures to Tackle Illegal Working” 16<sup>th</sup> March 2004

Internationally however, there appears to be growing recognition that action against human trafficking can be made more effective by a greater focus on its forced labour outcomes.. As recently observed by a European Experts Group on Trafficking in Human Beings<sup>4</sup>,

*“..the key element to the Trafficking Protocol is the forced labour outcomes, encompassing forced labour and services, slavery, slavery like practices and servitude. It is these human rights violations against the individual that the Trafficking Protocol seeks to redress. While in some cases it can be difficult to determine whether conditions are merely illegal and extremely exploitative, rather than forced labour or services....there is a wealth of history of international law, standards and interpretation of these concepts to rely on, which can provide sufficient certainty for criminal law and sanctions”.*

And as the EU Experts observed furthermore,

*“From a human rights perspective, there is no reason to distinguish between forced labour involving “illegal migrants”, “smuggled persons” or “victims of trafficking”.....States should criminalize any exploitation of human beings under forced labour, slavery or slavery like conditions, in line with the major human rights treaties that prohibit the use of forced labour, slavery, servitude etc. If such policies were followed, then many of the current confusions of the trafficking definition – whether a case was smuggling or trafficking, whether a case was trafficking or forced labour and whether a victim was perceived as “innocent” or “guilty” would become redundant. By policymakers concentrating primarily on the forced labour outcome the Trafficking Protocol can overcome its current definitional and practical operational difficulties and has the potential of a tool to more effectively tackle the human rights violation of trafficking in human beings”.*

The present study addresses the issues of forced labour and trafficking in similar fashion to the EU experts. The same terms can reflect different practices and perceptions. This means that cases on forced labour and trafficking as defined by International Conventions may not reflect cases in media or other reports using the same term. An example of the results of contextual variations of the interpretation of term ‘trafficking’ is the tragic death of the Chinese cockle pickers at Morecambe Bay referred to above. Though receiving a lot of media coverage, the deaths were

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<sup>4</sup> Draft Report of the European Experts Group on Trafficking in Human Beings, Consultative Workshop in the Framework of the EU Forum for the Prevention of Organised Crime, Brussels, 26 October 2004.

never linked to trafficking. The general perception in most destination countries is still that women are trafficked (mostly for the purpose of commercial sexual exploitation) while men are smuggled for labour exploitation.

The complexity of the term “forced labour” was acknowledged from the outset of this project. The common sense view regards forced labour as one individual who is personally able to exercise control and power over another or others, and this often extends over aspects of their lives over and above their work. This is certainly the view that is reflected in much of the press coverage of trafficking of migrants in the UK and is probably in part what leads to the focus on in commercial sex and domestic work. The kinds of relations that operate between clients/pimps and workers in commercial sex, and between employers and domestic workers, can be extremely personalized and particularistic. Workers in both these sectors may find employers, clients and third parties exercise considerable power over them, not just as an employee/service provider, but over their whole personhood (Anderson and O’Connell Davidson 2003). They are subject to the personal power and authority of individuals. The limitation of this approach to forced labour is that it can lead to the presentation of abuses as coming from morally bad people. Omitted here is how certain individuals come to be in positions of power over others, and, related to this, how abuses are facilitated by structural and legislative issues.

Leaving aside the popular idea of forced labour, it is clear that it does not have to be solely to do with the exercise of personal power when considering international definitions. The definition of forced labour in the ILO Forced Labour Convention 1930 (No. 29) and the European Court of Human Rights is:

*All work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily (Art. 2 ILO C. 29)*

Forced labour, in this study, is seen through the lens of the above definition as it allows the study to adopt a broader scope of investigation. Moreover, it allows the investigation of systemic factors leading to forced labour, while at the same not ignoring the individual perpetrators who make profits through forced labour practices.

## **Structure of the report**

This report begins by explaining some of the background to the research project, and by explaining its methodology. The third chapter discusses certain labour market factors which may account for the existence of forced labour practices in certain sectors, with a particular focus on construction, agriculture, care and contract cleaning. Chapter 4 presents the evidence for the existence of coercion and forced labour practices, as affecting mainly (but, by no means exclusively) irregular migrant workers within these sectors. Chapter 5 discusses questions of law enforcement and victim protection. Finally, some recommendations are put forward, in particular aimed to stimulate discussion as to how government agencies and employers’ and workers’ organizations as the ILO’s principal social partners might address these concerns in the future.

## **1. METHODOLOGY**

### **1.1 Background**

The main objectives and priorities of the present study were identified at a meeting held at TUC headquarters in December 1 2003, jointly organised by the TUC and the ILO's Special Action Plan to Combat Forced Labour, to discuss migrants and forced labour in the UK. Following this meeting, the authors were asked to conduct a qualitative research project, to shed light more light on forms and on experiences of forced labour and their underlying causes.

Though the pool of information is growing, to date there is little research available on these issues. The government's "Trafficking Toolkit",<sup>5</sup> for instance recognizes that there is a significant extent of labour exploitation of both male and female adult migrant workers, and that many irregular migrant workers are subjected to forced labour conditions, but also points to 'little concrete evidence of the extent of labour exploitation'.

Trade union representatives have suspected that forced labour practices operate in many sectors of the economy. At the December 2003 meeting however, four sectors were identified as being of particular concern, namely: care, construction, agriculture and contract cleaning. To concentrate on these sectors represents a shift, as academic and policy reports on "trafficking" have tended to focus on commercial sex and, to a lesser extent, domestic work in private households.

### **1.2 Aims and scope of the study**

The objective of the present study is thus to analyse existing evidence more systematically, looking *inter alia* at the demand factors, production systems and labour shortages which might promote coercive recruitment and employment practices in certain industries and sectors. Therefore the objective is not to examine specific cases of forced labour, but also to analyse more structural factors that can influence forced labour practices.

The scope of the study has been limited due to time restraints. Moreover the novelty of the subject in the United Kingdom, and the absence of any earlier research experience on which to draw, has inevitably involved some methodological difficulties. Research has to be of a qualitative nature, given the obvious difficulties of obtaining a representative sample of migrant workers to interview in the different sectors. First, the covert nature of irregular migrant work means that accurate figures are not available for the particular sectors. Second, the numbers are likely to fluctuate significantly from month to month, and cannot be disaggregated by nationality, gender or age. Though the research was essentially restricted to four main sectors, it was nevertheless decided to interview other people whose experiences could be analysed using forced labour indicators, when the opportunity should arise. Thus the research was conducted with an open mind, aiming to capture an initial picture of forced labour in the UK with the intention of encouraging further discussion and research.

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<sup>5</sup> (<http://www.crimereduction.gov.uk/toolkits/tp00.htm>)

### **1.3 Research methods and sample**

The qualitative approach adopted by the study involved gathering data from different sources. Besides a desk review and an Internet search, a variety of means were used to gain access to interviewees who had directly or indirectly experience of forced labour. These constituted migrants that were possibly victims of forced labour, agencies and employers possible involved in forced labour practices, as well as experts on this or related topics. In order to find interviewees, we drew extensively on the personal contacts of the principal researcher and those contracted to work on the project, snowballing from these to make contacts with others.

#### *Grey literature review*

Besides a more standard desk review, the grey literature review also included a newspaper review, covering the year between March 2003 and February 2004. The 'Lexis Nexus' search engine was used for the national and local newspaper searches. Trade magazines in agriculture, construction, contract cleaning and care, were also used; and where possible Internet searches looked for relevant articles.

#### *Interviews with migrant workers*

All interviews with migrants were in depth, unstructured, and in the subject's mother tongue where possible. Interviewers were requested to ask questions pertaining to forced labour indicators (see box below and annex A), but also to adapt their questions and approach sensitively to the particular situation of the interviewees concerned. In cases where interviews were not taped, notes were taken. When necessary and appropriate, contracts were copied and translated, and further follow up research – on particular companies involved for instance – was conducted.

### **Proxy indicators of forced labour**

Establishing a definition of forced labour was central to the December 2003 ILO-TUC meeting. It was decided to identify practices that might be indicators of forced labour:

1. Violence: including physical or sexual violence, and threats of violence
2. Other forms of coercion, such as debt bondage, retention of identity documents, threats etc.
3. Excessive dependence on employers or third parties
4. Other practices including excessive working hours and the provision of sub-standard living conditions

None of these proxy indicators establish a forced labour situation as such. However, interviewees were considered to be victims of forced labour if experiencing, or having experienced, at least one of the forced labour indicators in the checklist above, while at the same believing that they were not free to leave employment.

The following migrants were interviewed for the report:

- four contract cleaners from Nigeria, Ghana and the Philippines
- a total of 18 nurses from three Asian countries, through three group interviews
- three in-depth interviews with nurses and care home workers from the Philippines and Sri Lanka
- three construction workers from Poland
- three agriculture workers from Poland
- one construction worker from India
- one Polish hotel worker

Research material was obtained from interviews done specifically for this study on forced labour. The findings have been “triangulated” i.e. tested and confirmed through reference to wider sets of case studies, most particularly those in the public domain such as the press reports mentioned above, the TUC reports on migrant workers of 2002 and 2004, and other reports cited in the bibliography. For these purposes we have also drawn on material from the first stage (April-June 2004) of a research project funded by the Economic and Social Research Council *Changing status, changing lives? The socio-economic impact of EU accession on low wage migrant labour in the UK* referred to as the COMPAS study.<sup>6</sup>

COMPAS project interviews covered:

- six Lithuanian construction workers
- one Ukrainian construction worker
- two Polish construction workers
- one Ukrainian hospitality worker

Details of interviews with three contract cleaners from Bolivia and Ecuador in Latin America were also made available to the research team.

When this additional material is used to illustrate issues germane to this study this is indicated by the reference in the text.

### *Interviews with employers and agencies*

Interviews with employers and agencies were in depth and unstructured. Furthermore, this study also draws on broadcast and non-broadcast material from a television news report on gangmasters made by Old Street Films for Channel 4 News in March 2004. Again, interviews from the COMPAS study were used to complement primary data.

Three interviews were conducted with small cleaning agencies, accessed through personal contacts. One of these operators also worked as a contract cleaner. One of the key trade associations in the contract cleaning sector which represents many of the larger agencies, was also interviewed. Six of the agriculture sector in-depth interviews with employers or recruitment

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<sup>6</sup> Anderson and Rogaly are part of a team of four principal researchers on this project and are grateful to Martin Ruhs and Sarah Spencer for permission to quote from interviews done in the framework of this study.

agencies were used in this study. Separate interviews were carried out with two insiders to the gangmaster industry.

### *Interviews with experts*

Experts from different backgrounds were interviewed in order to obtain the broadest possible picture of forced labour. These included lawyers, members of community organizations, trade unionists and Health and Safety Executive (HSE) employees.

Immigration lawyers and advisers in both private practice and the voluntary sector were contacted between 23 February and 5 March 2004 to obtain information about their knowledge of forced labour practices with reference to their clients. 58 individual lawyers and legal advisers or members of law firms were contacted through at least two methods of communication. While the majority did not reply, those who did respond were given a semi-structured telephone interview by an immigration lawyer. Thirteen such interviews were conducted with lawyers, nine of these in private practice, and four from the voluntary sector.

A questionnaire was sent out at the beginning of the project to trade unions participating in the December seminar and to Citizens' Advice Bureaux (CABx). Five out of nine CABx completed the questionnaire, and two provided further information.

In depth interviews were also conducted with trade union organizers, campaigners and researchers working with contract cleaners (TGWU and UNISON), care workers in the private and public sectors (TGWU and UNISON), agriculture (TGWU) and construction (UCATT).

## **2. FORCED LABOUR AND TRAFFICKING: CONCEPTS, INTERNATIONAL STANDARDS, AND UNITED KINGDOM APPROACHES**

**By Stefanie Grant**

The United Kingdom, while it has recently adopted legislation on trafficking, as yet has no specific legislation on forced labour. It has however ratified the ILO's two key Conventions on forced labour, the Forced Labour Convention (No. 29 of 1930)<sup>7</sup>, and the Abolition of Forced Labour Convention (No. 105 of 1957)<sup>8</sup>. International standards on both these forms of human rights abuse are reviewed briefly below.

### **2.1 Forced labour: the international legal framework**

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<sup>7</sup> Ratified by 163 ILO Member States, thus enjoying almost universal acceptance.. The United Kingdom ratified in 1931.

<sup>8</sup> Ratified by 161 ILO Member States. The United Kingdom ratified in 1957.

Forced labour is proscribed as a violation of fundamental human rights in international and in national law<sup>9</sup>. Since the early years of the twentieth century, governments have systematically worked through the International Labour Organisation to agree international labour conventions which protect the rights of migrant as well as national workers, and proscribe forced labour.

These labour standards are reflected in the Universal Declaration of Human Rights - which proclaims a right to 'just and favourable conditions of work' – and in human rights treaties negotiated and agreed by United Nations member states.<sup>10</sup> The treaties give general protection to workers, including in relation to remuneration and fair wages, safe and healthy working conditions, reasonable working hours, and non discrimination; they give specific protection to women and children. The bar on cruel, inhuman or degrading treatment is strict. In general, these treaties draw no distinction between citizens and 'aliens', and protect most individual rights irrespective of immigration status<sup>11</sup>. The proscription of forced labour, and of cruel, inhuman or degrading treatment, is repeated in the European Convention on Human Rights and – again – states are required to protect 'everyone' within their national jurisdictions.

Recently, new international criminal laws have been agreed by governments in response to the perceived growth in the trafficking of human beings for exploitative labour and services. Forced labour and trafficking are closely linked. New international and national initiatives to combat trafficking have also reinforced efforts to combat exploitative labour, including within the ILO.

There is considerable overlap and convergence between international labour law, contained in ILO conventions, and international human rights law. Since many core labour standards are incorporated in the human rights treaties – for example, the prohibition on forced labour, or the protection given to freedom of association - this creates an additional means of enforcement to that available within the ILO system. Indeed, in some instances the treaties have been more extensively ratified than have the specific ILO conventions, and in this way more countries are legally bound.

The Convention on Migrant Workers<sup>12</sup> is the most comprehensive international standard dealing with migrant workers. Generally, the Convention does not break new ground, but rather brings together rights protections – including for irregular workers - which have already been accepted by states in the ICCPR and other human rights treaties. Examples include the prohibition on forced labour, and of cruel or inhuman treatment, for 'all' migrant workers, irrespective of immigration status. It creates one important new protection, by making it unlawful for anyone other than a public official to confiscate or destroy identity documents. The Convention has yet to be ratified by the UK or other EU members.

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<sup>9</sup> European Convention on Human Rights, A. 4, and Human Rights Act 1998.

<sup>10</sup> International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights, Convention to Eliminate Racial Discrimination; Convention to Eliminate Discrimination against Women; Convention against Torture; Convention on the Rights of the Child; Convention on the Status of Refugees. All have been ratified by the UK, and all other EU members.

<sup>11</sup> See – eg - ICCPR (A2(1)); and CAT (A16(1)).

<sup>12</sup> The United Nations Convention on the Protection of the Rights of All Migrant Workers and their Families, 1990. See Article 21.

ILO Convention 29 is the point of departure for action to combat forced labour.<sup>13</sup> The Convention requires governments to ‘suppress the use of forced labour in all its forms’; forced labour is defined as

*‘all work or service which is exacted ... under the menace of a penalty’ and which is not voluntary.*

Forced labour which is ‘for the benefit of private individuals, companies or associations’ is also included in the prohibition. The term ‘penalty’ covers not only penal sanctions but also loss of rights and privileges. Subsequent ILO conventions have developed the protection against forced labour, and have set standards for the rights of migrant workers.<sup>14</sup>

These conventions, which impose legal duties on ratifying countries, were reaffirmed and given universal application in 1998 through the ILO Declaration on Fundamental Principles and Rights at Work. The Declaration commits all members – even if they have not ratified specific forced labour conventions - to eliminate all forms of forced labour.

While all forced labour involves bad working conditions, not all situations of unsatisfactory working conditions constitute forced labour. Convention 29 does not contain a detailed definition of forced labour. The term ‘penalty’ covers not only penal sanctions but also the loss of rights and privileges. Not all situations of sub-standard working conditions constitute forced labour. Drawing on their lengthy experience the ILO supervisory bodies have identified several component elements, which – together or individually – can indicate a situation of forced labour<sup>15</sup>:

- i. Threats or actual physical harm to the worker.
- ii. Restriction of movement and confinement, to the workplace or to a limited area.
- iii. Debt bondage: where the worker works to pay off a debt or loan, and is not paid for his or her services. The employer may provide food and accommodation at such inflated prices that the worker cannot escape the debt.
- iv. Withholding of wages or excessive wage reductions, that violate previously made agreements.
- v. Retention of passports and identity documents, so that the worker cannot leave, or prove his/her identity and status.
- vi. Threat of denunciation to the authorities, where the worker is in an irregular immigration status.

These are that factors which can lead to extreme individual vulnerability, conducive to the emergence of forced labour situations. As will be seen later, their significance is confirmed by the

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<sup>13</sup> Convention concerning Forced or Compulsory Labour (No. 29), 1930, Arts 1, 2 & 4. The Convention has been ratified by 163 states, including the United Kingdom. CHECK.

<sup>14</sup> Convention No. 143 (1975) on migrant workers provides that all workers shall enjoy equality of treatment in respect of rights arising out of past employment ‘as regards remuneration, social security and other benefits’, Article 9.

<sup>15</sup> See ILO (2004): Human Trafficking and Forced Labour Exploitation: Guidelines for Legislators and Law Enforcement, Geneva.



findings of the present *Report*. Each of these acts, if committed intentionally or knowingly by an employer, should be a criminal offence under national law.

## 2.2 Trafficking in persons: the international legal framework

The point of departure for forced labour and trafficking is the Palermo Protocol to the United Nations Convention against Transnational Organized Crime<sup>16</sup>, which made trafficking in persons an international criminal offence in 2000. This new law reflects an international commitment to curb transnational organised crime. The Protocol was drafted to meet the need for a universal legal instrument that addressed all aspects of trafficking, whether for sexual or labour exploitation. The offence has three core elements: movement of a person, with deception or coercion, into a situation of exploitation. The Protocol's objectives are to prevent trafficking, punish traffickers, and protect victims, 'including protecting their internationally recognised human rights'.

The Protocol requires states to criminalise trafficking<sup>17</sup>. It specifies the activities, means and purposes that constitute the offence:

- (1) The *activities* involve: recruitment, transportation, transfer, harbouring or receipt of persons.
- (2) The *means* include: threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of other giving or receiving of payments or benefits to achieve the consent of a person having control over another person.
- (3) The *activity* must be for the purpose of exploitation, which must include – inter alia - exploitation for the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, or servitude.

The consent of the victim is irrelevant where any of these means have been used.

The Protocol does not by any means provide a watertight definition of trafficking. For example, it does not specify precisely what is meant by “other forms of coercion”, or “abuse of power or of a position of vulnerability”. Its failure to explicitly define difficult terms such as “exploitation”, “coercion”, “vulnerability” and so on may be pragmatic, but it also allows space for conflicting interpretations of what does and does not constitute trafficking. The protocol's attempt to define trafficking through reference to these undefined concepts such as “exploitation”, “deception” and “consent” also presents more general problems in terms of distinguishing trafficking from legally tolerated employment contracts (also from legally tolerated forms of exploitation of women and children within families). Questions about what constitutes an exploitative employment practice are much disputed - indeed they have historically been, and remain, a central focus of the organised labour movement's struggle to protect workers. There is variation between countries and variation between economic sectors in the same country in terms of what is socially and legally constructed as acceptable employment practice. In the absence of a global political

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<sup>16</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons; the Protocol supplements the United Nations Convention against Transnational Organized Crime of 2000.

<sup>17</sup> A. 3(a).

consensus on minimum employment rights, and of cross-national and cross-sector norms regarding employment relations, it is extremely difficult to come up with a neutral, universal yardstick against which “exploitation” can be measured. The protocol definition of trafficking thus leaves open questions about precisely how exploitative an employment relation has to be before we can say that a person has been recruited and transported “for purposes of exploitation”. Likewise, we need to ask just how deceived a worker has to be about the nature and terms of the employment prior to migrating before s/he can properly be described as a “victim of trafficking”? There are numerous different elements to the employment relation: hours of work, rates of pay, job content, work rate, working practices, living conditions, length of the contract, and so on. Is it enough for a worker to be deceived about just one of these elements by a recruiter, or must s/he be entirely duped about every aspect of her work in order to qualify as a trafficked person?

Although no ILO convention deals exclusively with trafficking, the elements which constitute or facilitate exploitative employment are well covered by existing ILO labour standards. In addition, the inclusion of trafficking for forced labour as part of the Protocol’s definition of exploitation brings it within the existing obligations of States Parties under ILO labour standards. The Protocol also sets out steps to be taken by states at a national level to assist and protect victims, and identifies forms which the assistance may take ‘in appropriate cases’, including provision of housing, medical assistance, the possibility of compensation, and immigration measures to allow the individual to remain in the country either temporarily or permanently.<sup>18</sup>

Core elements of the Protocol have now been incorporated in European law; from 1 August 2004, all European Union members were to have amended their domestic laws to criminalise trafficking in human beings, as defined in the Protocol, and to ensure that the offence is punishable by ‘effective, proportionate and dissuasive criminal sanctions’, in the case of both individuals and corporations.<sup>19</sup>

International law distinguishes between human trafficking, and human smuggling. The United Nations Convention against Transnational Organised Crime also has a supplementary Protocol on Smuggling. Smuggling is defined as procuring of another person’s illegal entry into a country of which he or she is not a national. The distinction between smuggling and trafficking as expressed in the two protocols centres on questions about a) whether the migrant consented to irregular entry; and b) the relation of the trafficker/smuggler to subsequent exploitative working conditions. Trafficking requires the continued exercise of control over migrants once they have moved, while the role of the smuggler is simply to facilitate border crossing. The two protocols assume that smuggling and trafficking can be distinguished through reference to where and how profit is extracted by third parties, and through reference to the specific intentions of the third parties who recruit and transport them. This implies some kind of active conspiracy between the third parties who profit from recruitment and transportation, and those who exploit the trafficked person’s services/labour at the point of destination. It thus reflects a particular concern with trafficking as the outcome of organised and purposive action on the part of third parties. Certainly there are cases that conform to this narrow definition, for there are some criminals who cooperate with one another in, and jointly profit from, a process that involves recruitment, transportation

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<sup>18</sup> Articles 6 & 7.

<sup>19</sup> Council Framework Decision on combating trafficking in human beings (2002/629/JHA).

and exploitation. There are also some employers who send agents in their pay to “recruit” people from other regions or countries for purposes of exploitation. But there are many other cases in which the agents who recruit and transport people into forced labour or slavery-like conditions have no established relationship with the third parties who ultimately orchestrate and profit from the labour/services of the people so transported. Instead, they use deception or other means of coercion to entice or pressure women, men and/or children to accompany them to places where there is a demand for labour, and then collect a fee from any employer who happens to be looking for “workers”. In these cases, recruiting agents profit from the movement of persons, and since the subsequent condition of those persons is a matter of indifference to them (they would get paid regardless as to whether the people they move are abused and exploited, or free and well paid), they cannot be described as having an intent to subject the victim of the coerced transport to additional violations in the form of forced labour or slavery-like practices. But if “smuggling” is understood to refer to voluntary and consensual partnerships between migrants and those who facilitate their migration, then this latter type of recruiting agent cannot properly be described as a “smuggler”.

Likewise, there are those who offer to facilitate migration but encourage migrants to consent to massively indebted themselves by deceiving them about earning opportunities and working conditions in the point of destination. Once transported, the migrant finds it impossible to repay the debt except by selling themselves into slavery-like conditions, or by working in prostitution even though they initially consented to take on the debt because they had been led to believe that they could earn enough to repay it from some other occupation. Again, the person who facilitates migration profits from the movement, but does not directly organise or control the exploitation of the migrant’s services/labour, and so falls short of being a “trafficker” according to some readings of the trafficking protocol.

The two protocols assume a neat line of demarcation between voluntary and consensual, and involuntary and non-consensual processes of migration. Once trafficking and smuggling are recognised as processes, the idea of “consent” is extremely problematic since individuals can volunteer to enter the process and then find themselves unable to retract however much they want to, or conversely, they can be coerced into entering the process but then proceed voluntarily. The trafficking/smuggling distinction represents a gaping hole in any safety net for those whose human rights are violated in the process of migration. The two protocols allow states to divide deserving “victims of trafficking” from undeserving “partners in smuggling” without actually providing “any guidance on how trafficked persons and smuggled migrants are to be identified as belonging to either of these categories” (Gallagher 2002, p27).

### **2.3 Forced labour and trafficking: Overall UK policy approaches**

In 2002 the UK Government set out its policy towards forced labour in the context of migration in a White Paper, *Secure Borders, Safe Haven*<sup>20</sup>. In his Introduction, the Home Secretary wrote:

‘We will need to be tough in tackling ... the people traffickers who use the misery of others for their own gain. It requires us to tackle illegal working, ending exploitation in the shadow economy and dealing with gangmasters and corrupt businesses ....’

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<sup>20</sup> CM 5385.

The Paper presents government policy on migration and labour exploitation in the context of illegal migration and migration control. It notes that '(I)rregular migration ...profits traffickers, smugglers and unscrupulous employers, damages legitimate business', and 'makes illegal migrant workers vulnerable to exploitation and social exclusion'. The problems are wide ranging. 'Some ... employers are paying their workers below the minimum wage. They may also avoid other employer responsibilities such as welfare provision, safety requirements or paying tax and National Insurance contributions. ...they are not only exploiting the workers, such employers are also gaining an unfair advantage over legitimate businesses...'. The Paper recognises that problems connected to the employment of irregular migrants is particularly severe in the catering, cleaning, hospitality, and construction industries, and in agriculture, and argues that managed migration is needed to ensure that legal labour is available to satisfy these business needs.

The White paper announced new immigration and police enforcement measures, and new laws on trafficking for labour exploitation, as well as for people smuggling and trafficking for sexual exploitation.

## 2.4 Recent UK legislation

These government proposals have now become law, in part through changes to immigration law, and in part through legislation creating a compulsory registration regime for gangmasters.

The new laws are intended to fill gaps in existing UK law, and to complement relevant criminal law, and the existing framework of employment protection. UK employment law is a sophisticated system of legislation and regulation covering – eg - wages, working conditions, and discrimination. But for workers in an irregular immigration status the protection it provides is severely limited because it applies, almost exclusively, to those working under lawful contracts. This is an area which is complex, and very far from straightforward in its application.<sup>21</sup>

### *Trafficking*

In 2002 a new immigration offence of trafficking in prostitution was created<sup>22</sup>, followed in July 2004 by a second new offence of trafficking people for exploitation<sup>23</sup>. Both carry a maximum sentence on conviction of 14 years.

In its definition of labour exploitation, the 2004 Act relies on the international prohibition of forced labour. It provides that a person

*'is exploited if (and only if) –*

*(a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour)....*

*(b) .....*

*(c) he is subjected to force, threats or deception designed to induce him - '*

<sup>21</sup> See, generally, *Working in the UK: Your Rights*, TUC, 2004; and *The Newcomers Handbook, a guide to the employment and unemployment rights of all working age migrants*, ed. Will Summerville, Centre for Economic and Social Inclusion, 2004.

<sup>22</sup> The Immigration Nationality & Asylum Act 2002, s. 145.

<sup>23</sup> Immigration and Asylum (Treatment of Claimants) Act 2004, s. 4.

*i. To provide services of any kind,  
ii to provide another person with benefits of any kind, or  
to enable another person to provide benefits of any kind...*<sup>24</sup>

The offence may be committed in one of three ways:<sup>25</sup> bringing someone to the UK with the intention to exploit him/her, or believing that exploitation by another person is 'likely'; arranging travel within the UK of someone who may have been trafficked into the country with the intention to exploit or belief that this is likely<sup>26</sup>; similarly, arranging departure from the UK, again with an intention to exploit, or a belief that exploitation is likely.

The 2004 Act also amends existing law which makes it a criminal offence for an employer to employ a person who is illegally in the UK, or whose immigration status does not allow him or her to work<sup>27</sup>.

One of the present Government's first legislative acts was to give effect to the European Human Rights Convention in English law, through the Human Rights Act 1998. This has opened the way to some successful Article 4 claims before the Immigration Appeal Tribunal, and immigration adjudicators, by women who have been trafficked and held in forced domestic labour. In one recent case, the adjudicator recorded that the appellant – a Nigerian citizen – had been 'kept in conditions of virtual slavery' and found that this 'was in breach of her rights under article 4'. She had been brought by an employer to London, who made her work long hours, kept the travel document, paid her no wages, and beat her.<sup>28</sup>

New legislation on smuggling has not been enacted, since illegal entry and assisting illegal entry are already offences under UK law, for which the individual and the smuggler may – respectively – be prosecuted.<sup>29</sup>

The distinction between trafficking and smuggling is important because those who are trafficked are seen as victims, who should be given assistance. The Home Office acknowledges that it may be difficult to distinguish initially between trafficking and smuggling, since people 'may think they are being smuggled, but are in fact being trafficked, as they are unaware of their fate'. Its view is, nonetheless, that '(b)y far the vast majority of people entering the UK illegally are

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<sup>24</sup> ECHR Article 4 reads:

'1. No-one shall be held in slavery or servitude.

2. No-one shall be required to perform forced or compulsory labour'.

<sup>25</sup> See Note 16, *supra*.

<sup>26</sup> The Act defines trafficking within the UK in these terms: 'A person commits an offence if he arranges or facilitates travel within the United Kingdom by an individual (the "passenger") in respect of whom he believes that an offence under subsection (1) may have been committed', and (a) he intends to exploit the passenger in the United Kingdom or elsewhere, or (b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere'. S.4 (2).

<sup>27</sup> Asylum & Immigration Act 1996, s.8; Immigration & Asylum (Treatment of Claimants) Act 2004, s.1.

<sup>28</sup> See: See adjudicator determination, *Miss T v SSHD (AS/03637/2004)*, in which a policy apology for failing to investigate is also (para. 75). See also Immigration Appeals Authority decisions: *Miss AB v SSHD (CC/64057/2002)*; *Ms Tam Thi Dao v SSHD (HX/28801/2003)*.

<sup>29</sup> Immigration Act 1971, ss. 24, 25, 26.

smuggled rather than trafficked’<sup>30</sup> The distinction becomes even more elusive where a person who was initially smuggled into the UK is later trafficked within the country to undertake exploitative work.<sup>31</sup>

### *The Gangmasters Act*

The Act creates a compulsory licensing system for gangmasters and employment agencies who supply, or use, workers involved in agricultural activities, gathering shellfish and related processing and packaging activities. Its purpose is ‘to curb the exploitative activities of agricultural gangmasters’. The Explanatory Notes prepared for the House of Lords debate note that while (t)here is nothing illegal in the activity undertaken by gangmasters and some run legitimate businesses within the law.... a number ... are ....supplying people who are working in the UK illegally.... Others are ignoring the basic rights of the people they employ eg to receive the minimum wage and are profiting at their expense’<sup>32</sup>

#### The Act:

- Defines a gangmaster as a person (“A”) ‘ who ‘supplies a worker to do work ... for another person (B)’;
- lists – in broad terms - the wide range of sub contracting ‘arrangements’ to which the licensing regime applies;
- makes it an offence to operate as a gangmaster without a license, to possess a false licence, or to use an unlicensed gangmaster (subject to a reasonable steps defence), or to obstruct enforcement officers;
- adopts a comprehensive definition of ‘worker’ which includes both legal and illegal workers;<sup>33</sup>
- makes all the offences arrestable;
- applies to employment agencies operating in the agricultural and shellfish sectors, and to companies, unincorporated associations and partnerships.
- Enables the assets of convicted gangmasters to be seized (by amending the Proceeds of Crime Act 2002).

The Act began life as a private member’s bill, and was given added momentum by the tragic deaths of Chinese cocklers in Morecambe Bay in February 2004, and also by the work of the EFRA Parliamentary Select Committee.<sup>34</sup> The Committee’s initial scepticism as to the need for a compulsory licensing system, was overcome by the strength of evidence and opinion put before

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<sup>30</sup> The Home Office *Toolkit on Trafficking of People* characterizes smuggling as the ‘illegal transport of a person across state borders, which results in a benefit for the smuggler. It follows that the person smuggled will be complicit... and once in the country ... will be left to their own devices’.

<sup>31</sup> See Note 18, *supra*.

<sup>32</sup> Gangmasters (Licensing) Act 2004.

<sup>33</sup> ‘A person is not prevented from being a worker ... by reason of the fact that he has no right to be, or to work, in the United Kingdom’. A. 26(2).

<sup>34</sup> Parliamentary Select Committee on the Environment, Food and Rural Affairs, 14<sup>th</sup> Report, [HC 2002-03 691], and 8<sup>th</sup> Report 2003-4.

it that voluntary licensing would be ineffective. By the time the Bill was adopted, it had the support of a very broad coalition.<sup>35</sup>

### **3. LABOUR MARKET ISSUES AND FORCED LABOUR IN THE UNITED KINGDOM**

This study focuses on four economic sectors in which significant numbers of migrant workers are found, and that were suspected to be prone to exploitative labour conditions, including possible forced labour. These sectors are: construction, agriculture/horticulture, contract cleaning and residential care.

Before turning to the particularities and commonalities of these sectors, we first examine briefly some general characteristics of the UK labour market. We do this in order to try to understand the context in which labour exploitation and, arguably, forced labour are occurring. Are there particular, systemic features in the UK labour market in general, and in these sectors in particular, which create an environment that may actively encourage the exploitation of certain categories of worker? Or are we looking rather at isolated instances of abuse that can be explained by the profit-maximising behaviour of a small number of unscrupulous employers acting outside the law? These questions are not easy to answer, but the study gives some initial indications as to the labour market-related factors underpinning labour exploitation and the possible incidence of forced labour in the UK.

#### **The UK labour market and migration**

The UK now has one of the most flexible labour markets in Europe. This flexibility has several dimensions: flexible employment patterns, for instance with regard to working hours; easier hiring and firing of workers; widespread use of short-term contracts; greater flexibility in pay arrangements, linked to performance, for example; and high geographic mobility of the workforce.

Debate over the merits of a flexible approach to the labour market remains intense. Some analysts credit this approach with having reduced unemployment to an unprecedented low, increased economic competitiveness and attracted foreign direct investment. Others maintain it has led to work intensification and heightened worker exploitation. Regardless of this debate, it remains the case that a significant number of workers are caught in a cycle of low wages and unemployment.<sup>36</sup> Figures from the Office for National Statistics show that in spring 2004 there were an estimated 272,000 jobs with pay less than the national minimum wage held by people aged 18 or over<sup>37</sup>.

As observed, the UK government's 2002 White Paper recognises that the UK needs migrant workers so as to compete effectively in the world economy, and also to fill job vacancies at both high and low skilled ends of the economy. "Migrants bring new experiences and talents that can

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<sup>35</sup> The coalition included the National Farmers' Union, TGWU, TUC, supermarkets [Tesco, ASDA and Sainsbury's] the Institute for Employment Rights, reputable gangmasters and migrant worker groups.

<sup>36</sup> See Gregg, P., Hansen K. and Wadsworth, J. 1999.

<sup>37</sup> Milton, J "Low pay estimates for 2004" Labour Market Trends, Office for National Statistics December 2004

widen and enrich the knowledge base of the economy....the self-selection of migrants means they are likely to bring valuable ideas, entrepreneurship, ambition and energy”.<sup>38</sup> And there is a ready supply of migrant workers, both from elsewhere in Europe and much further afield, to answer this demand.

### **Labour market issues in study sectors**

The four sectors covered by the study (construction, agriculture/horticulture, contract cleaning and residential care) exhibit certain common characteristics as well as some differences. In general, all are operating in highly competitive markets, in which there is constant strong pressure on owners and employers to reduce costs or increase productivity in order to remain in business. Despite their internal heterogeneity, the segments of the sectors which concern us involve arduous, sometimes dangerous and usually informally skilled work. Labour tends also to represent a significant proportion of total operating costs.<sup>39</sup>

The main characteristics of the sectors, and how these impact on labour arrangements, are examined in turn below.

#### **i. Industry size and structure**

The sectors are large in terms both of value to the economy, and of the size of the workforce. Construction, for example, employs over 2 million people and accounts for 6% of GDP. Contract cleaning employs some 800,000 workers. All the sectors are internally heterogeneous. Each encompasses varied types of work and skills as well as different employment relationships. For instance, “construction” covers everything from multi-million pound infrastructure projects to loft conversions. Contracts may be long- or very short-term and skills range from building design to heavy physical labour. The care sector is also large and diverse: it includes care for disabled people, children or for the elderly, care may be temporary or long term, and can take place in the public or the private sector. Care involves many different kinds of work - including nursing, laundry services, catering and cleaning - and is conducted under many different types of contractual relationships. Agriculture includes different crop production systems, as well as packing and processing operations. Contract cleaning may extend into related services such as recycling, maintenance and renovation work, and includes varied forms of labour contracts.

In most cases, the work is location-specific, meaning that certain processes cannot be transferred to another work-site. When a crop is to be grown on a particular holding, a building constructed at a specific site, a supermarket cleaned, or a sick person cared for, labour must move to the place concerned: the “work” cannot be relocated to where labour might be more readily or cheaply available. Thus, economic restructuring can have only limited effects on the sectors investigated.

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<sup>38</sup> Home Office (2002) *Secure Borders, Safe Haven: Integration with Diversity in Modern Britain*, para.11, p.11.  
<http://www.official-documents.co.uk/document/cm53/5387/cm5387.pdf>

<sup>39</sup> For example, in contract cleaning, 80% of the total invoice value of larger companies is direct labour costs. Staffing costs typically represent 45-60 per cent of care home fees depending on the ratio of nurses to care assistants.



Although there are large numbers of small operators working within these sectors, each one has also seen a growing concentration of capital and cross industry consolidation. For example, 166,181 companies are registered by the DTI in construction, of which nearly half have only one employee, and less than 1% have 250 or more employees. But the firms employing one person account for only 3% of output. Contract cleaning is dominated by large companies; the four largest account for 25% of the total turnover. But the sector also attracts small entrepreneurs, with some workers beginning as employees and then setting up their own small businesses. Although the fresh fruit and vegetables sector is dominated by large, often multinational organisations, which can make a reasonable return on capital, there is still a majority of small companies with turnover less than £100,000.<sup>40</sup> While many private care homes are small businesses run individually, major providers (defined as an operator of three or more homes or a publicly quoted company) are continually increasing their share of the market.

The relation between the large and small operators, and their different degrees of market power vis-à-vis the buyers of their goods and services, helps explain the range of labour conditions that are encountered. There is evidence to suggest that smaller players cannot achieve the economies of scale required to follow employment law to the letter. Research has found for instance that the full cost of operating an efficient, good quality care home in 2001 was between £75 and £85 per week higher than average fees paid by local authorities (Laing 2002). Only the larger operators, with their economies of scale, could operate profitably in such an environment. In horticulture, where the power of the supermarket retailers is great relative to that of many grower-suppliers, small-scale growers are under intense pressure and must continually reassess their costs, including that of labour. All the small fruit and vegetable suppliers interviewed spoke of operating right at the margins of viability. Suppliers afraid of losing their contracts have become increasingly dependent on the retailers and few organise collectively.

Whereas a large company is able to bear the costs of employing a human resources manager to monitor and ensure compliance with legislation as it changes, a small owner-managed company is hard pressed to do this. The latter is much more likely to make use of informal understandings with labour-providers and workers. This does not excuse any exploitative labour practices by small companies, nor does it imply necessarily that big companies do not engage in bad labour practices<sup>41</sup>. However, it is important to bear in mind that, in the food chain as elsewhere, there are different operators involved, who may have conflicting interests. To understand abusive employment relations, it is important to consider the often grossly unequal market strengths of small suppliers and their customers.

Large companies are often at the forefront of calls for better regulation and improved labour standards, partly because they have the economies of scale that facilitate the implementation of regulations. The Cleaning and Support Services Association (CSSA), for example, appears to acknowledge this through its requirement for member companies to have a turnover of at least £200,000 as it believes this is the minimum turnover necessary for a company to be able to adhere to their code of practice.

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<sup>40</sup> According to the 2004 Key Note Market Report

<sup>41</sup> On the contrary. At a recent seminar organised by Norfolk Constabulary, a large agriculture-sector company presented its market image of promoting good employment practices only to be challenged by a number of former employees in the audience (Migrant Workers Seminar, Norwich, Norfolk, 11<sup>th</sup> June 2004)

## ii. Production characteristics

In both construction and agriculture, production is distinctly time-bound. Construction projects are by nature limited in time, seasonal, and are often one-off. Short intense bursts of temporary work are therefore characteristic. Agricultural operations are clearly seasonal in nature, with peaks in demand for labour coupled with relatively slack periods. The increasing requirement of retailers for *year-round supply* has meant that, alongside an ongoing decline in the proportion of the fruit and vegetable market supplied by UK growers, there has been an upsurge in the activities of packhouses and distribution centres.

Such periodicity has obvious implications for labour. The workforce must be available when needed, and the possibility must exist to lay it off when no longer required. Hence, the need for flexible labour arrangements. In construction, a response has been the development of a secondary labour market to cope with the fluctuating workload, the “labour only sub-contracting” (LOSC) market. Construction workers are hired as if they were fully independent self-employed workers or through intermediaries who are themselves often construction workers operating as very small employing firms. Growth in sub-contracting, long sub-contracting chains and the shift towards greater use of LOSC have led to a more fragmented industry. For workers it can mean short-term contracts rather than long-term direct employment. The mass “self-employment” results in a loss of employment rights and also social rights, and has serious implications for health and safety in one of the country’s most dangerous industries (Harvey 2001). Employers and contractors benefit as the labour is automatically cheaper because of reduced national insurance contributions. For workers, although there are some immediate incentives, there are also longer-term risks, including loss of rights to benefits, sick pay and state pension.

In agriculture, there are many seasonal and casual workers.<sup>42</sup> The Environment Food and Rural Affairs Select Committee reports on Gangmasters in 2003 and 2004 have firmly drawn attention to the Government’s lack of information on the numbers of temporary workers in agriculture. The use of temporary workers is nothing new, as it is linked in large part to the nature of the biological production cycle. The novelty however lies in the technological developments that tie supermarket check-outs to the instant generation of new orders. Suppliers are obliged to meet these orders at very short notice, hence requiring workers available virtually “on tap”, highly flexible in terms of days and hours worked. Such conditions seem likely to be conducive to exploitation and possible forced labour practices. Further details are provided in the section below on sub-contracting arrangements, and in particular the prevalent gangmaster system.

## iii. Workforce characteristics, recruitment and retention issues

There is a significant gender division of labour in at least three of the sectors examined – construction being almost exclusively male, and cleaning and care predominantly female. Agriculture is more mixed.

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<sup>42</sup> The agricultural census taken on 1 June 2002 recorded 64,000 seasonal and casual workers in agriculture and horticulture. This figure does not take account of packhouse workers packing produce not grown on the site. Nor does it include workers employed temporarily at other times of year.

Migrant workers are found in significant numbers in all sectors. In construction, the proportion of migrants is surprisingly difficult to ascertain. Although the industry maintains it has low numbers of ethnic minority groups within the workforce, an estimated 88,000 non-UK workers were employed in construction in January 2003 (Trades Survey, Construction News Jan. 2003), mostly in London and the South East. Despite their numbers, migrants are largely invisible and are disproportionately represented as labourers (Trades Survey 2003). Workers come from Turkey, South Asia, China, Romania, Bulgaria, CIS states and from the European Union - Portugal and A8 countries<sup>43</sup>. It is not possible to get a work permit for construction work. However, it is possible to enter the UK on a visa as a self-employed person and subsequently find work in the sector; this contributes to the invisibility of migrants. Although workers from A8 countries must register with Work Permits (UK), they do not have to do so if they are self-employed. Migrant workers appear to be popular in the construction industry as they constitute cheap labour working long hours in an industry with a labour shortage. The advantages of migrants are made quite explicit by some labour agencies. For example, the Overseas Human Resources Bureau Limited, a recruitment agency that specializes in the medical and construction industries, advertises its Romanian construction workers thus:

*“The workers are available to work 10 hours per day, 6 days per week, which ensures completion of projects on time, and in many instances ahead of schedule...OHR Bureau believes it’s (sic) services are an invaluable aid to contractors, not only providing the means to reverse the skilled manpower shortage within the industry, but also to bring their present excessive labour rates to a more acceptable commercial level ”*

*(<http://www.ohrb.com/construction.html>)*

A recent OECD study found that the number of foreign workers in agriculture and fishing in the UK was not statistically significant (OECD 2003). Although not visible to official statistics, it is believed however that large numbers of irregular migrants work in the agricultural sector, including some in forced labour situations.

Some migrants work legally in the sector. The Seasonal Agricultural Workers Scheme (SAWS) has provided permits to 25,000 agricultural (including packhouse) workers in 2004. Under this scheme, the licensed operators who supply workers have the power to inspect growers’ accommodation and work-sites before approving them to receive SAWS workers. The operators themselves are monitored by Work Permits (UK). SAWS workers suit growers who require a continuous supply of workers over a period of five weeks or more, and whose priority is security of supply. Although allegations have been made that SAWS workers are illegally hired on to other companies (TUC, 2004), the scheme at least builds in a degree of protection for workers against exploitation.

In contract cleaning, there is a large recognized presence of ethnic minorities – approximately two thirds of the work force – but there are no estimates of the proportion of migrants in the

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<sup>43</sup>And it seems increasingly from China. Many of these latter would be failed asylum seekers without documentation who are neither able to work legally nor to be removed to China

sector. There is some evidence that many migrant workers are male, contributing to an increase in the proportion of men working in the industry overall. In London, there are large numbers of non-English speakers working in the sector and migrants, rather than settled second generation minority groups, predominate (Allen 1997). Although there are no visas as such for work in contract cleaning, workers can be on business visas, students, and those who have Indefinite Leave to Remain, as well as those working irregularly.

In the residential care sector, migrants with a variety of immigration statuses are being employed as both care assistants and nurses, given acute problems of recruitment and retention in the sector.

In fact, these sectors all encounter recruitment difficulties and have retention problems leading to high labour turnover. The reasons vary, but there are common problems: the work is often physically tough, informally skilled and not well respected. In contemporary UK, which lately has been approaching full employment, nationals and other resident workers have access to other kinds of jobs. However there are additional reasons for recruitment difficulties.

The first, a shortage of affordable accommodation, is a result of the place-dependency alluded to earlier. For work in agriculture and rural care homes, there is often no reasonably priced accommodation available, given the shortage of rural housing.

*One advice worker, while commending her local authority for taking the issue of migrants' working conditions seriously, also pointed out the limitations of an approach which can only shut down sub-standard accommodation, further limiting housing stock and putting people on to the street.*

Both construction and contract cleaning are, in their different ways, multi-sited. Workers may have to be prepared to live on-site or in sub-standard accommodation nearby. In a highly casualised labour market where workers move on a regular basis between sites, travelling long distances may also be required. Both living-in and long travelling act as serious disincentives to UK workers, embedded in communities and perhaps with families to maintain. Newly arrived migrants, in contrast, may have little option but to accept sub-standard accommodation provided by employers or agents.

The sectors all contain segments of insecure work and this too can contribute to recruitment difficulties. The case of seasonal weeding and harvest work in fruit and vegetable production illustrates how these two factors, accommodation and insecurity, can work together to bring about a substitution of migrant labour for indigenous workers:

*After the economic restructuring of the UK economy in the 1980s, and the closure of mines in Yorkshire and the North East, many unemployed workers sought temporary work in agriculture, for example in Lincolnshire and Cambridgeshire. These workers were combined with workers from continental Europe who arrived via the Seasonal Agricultural Workers scheme, and workers from (mainly) white commonwealth countries, such as Australia and New Zealand who came as "working holidaymakers". Increasingly, as the economy and*

*employment has recovered since the late 1990s, local and longer distance 'commuting' UK nationals found other work. The Vale of Evesham has continued to be supplied with workers from Birmingham, many of them British residents of south Asian origin. However, while the temporary nature of the work may have suited them before, it has become much less predictable. Other regular and irregular workers have taken their place, including those from other EU-15 countries, notably Portugal, from eastern Europe (Poland, Lithuania, Bulgaria and Ukraine) some of which are now EU-25 nationals, and elsewhere, including in particular South Africa, China, Iraqi Kurdistan and Afghanistan.*

Why do employers or agents opt for migrant workers rather than locals? There are many reasons, in addition to the unwillingness of indigenous workers to take up the arduous and dangerous jobs referred to above. It seems likely that it is far easier to impose adverse conditions on migrants than locals. Local workers may be able to cite common practice or draw on past mutuality or familiarity to argue against long or awkward hours. Longer-distance commuters from within the UK may be emboldened by their nationality and motivated by the distance from home to argue against excessively long hours. Some employers spoken to for this research saw this as awkwardness, and as potentially costly. The labour relations described by migrants who are in the grey areas of employment found at the end of long sub-contracting chains are far more those of a patron-client relationship than of employer-employee or agent-worker. Workers were even found to be giving third parties and employers personal gifts as well as money in order to get access to work.

A final issue worth noting on migrants and recruitment represents something of a paradox – the need to balance labour flexibility with the retention of valued workers. From the perspective of the employer or agent, uncontrolled labour turnover is undesirable. However “unskilled” a job may appear to be, losing experienced and trained workers costs money as does finding replacement. As said one employer:

*‘We have found over time that if we can establish a relationship with certain individuals that [a] gangmaster is employing...it’s much easier to fulfil the requirements of our customers and so if there’s a Lithuanian gang cutting cauliflowers today who were with us all last year, did a super job last year, we asked if it was possible for them to come back again and they have’.*

*Vegetable grower, Lincolnshire, March 2004*

Thus, while employers and agents may be looking for flexible workers whom it is easy to hire and fire at will, retention too may be important. Leadership capacity and loyalty are also valued in migrant workers. Good experience with migrant workers probably explains why, in the lead up to the enlargement of the EU, more than one employer spoke about the desirability of some accession country workers (formerly on the Seasonal Agricultural Workers Scheme) continuing as team leaders. However, while good and continuing relations with an employer are very important for temporary workers when there is a shortage of work (Wells, op cit), at other times

such relations can constrain the workers' freedom in the labour market by creating obligations towards a particular employer (Rogaly et al, 2004).

#### iv. Sub-contracting

Since the 1980s, employing organizations in the UK have shifted employment practices in ways that have increased the numbers of people in the “contingent” workforce. Activities such as catering, security and cleaning previously conducted in-house have been “contracted out”. Even core activities may be contracted out: some of the large construction companies, for instance, now have very few construction workers and are staffed predominantly by administrative and managerial staff. Compulsory competitive tendering in the public sector was given a legislative basis in 1988, and this too extended the use of sub-contracting. There are different forms of sub-contracting and a wide variety of agencies and entrepreneurs mediating these relationships.

In the sectors under examination, various forms of sub-contracting prevail. We have examined above the “LOSC” system in the construction industry. In agriculture, the gangmaster system of recruitment of temporary and casual labour is well-known and is discussed below. Sub-contracting chains in contract cleaning are often relatively short, with easy links to the informal economy through, for example, the use of false national insurance numbers. In the care industry, while workers may or may not themselves be sub-contracted through agencies, the care home itself often is: as the NHS geriatric provision declined, local authorities have come under pressure to subcontract provision out to private residential and nursing care homes.

Sub-contracting may be a way to access specialized skills, but it can also serve to cut labour costs. Where competing firms make their profits by selling exclusively labour services, the cost of labour is driven ever lower:

*As a gesture of our good will we may allow at no cost to yourselves free labour and transport consisting of 5 workers for 5 days. This is how confident we are of supplying you with fast reliable and efficient staff.*

(Advertisement for gangmaster services)

The government recognizes, in its Trafficking Toolkit, the possibilities for exploitation in sub-contracting arrangements:

*In some areas of the country gangmasters organise labour for particular sectors and are known to impose excessive charges on workers and make unlawful deductions from their wages, exploiting the fact that they are often illegal immigrants.*

Sub-contracting allows labour flexibility, and passes risk down through the sub-contracting chains that develop to enable labour agencies to respond to fluctuating demands. Mother's Day, for example, generates a very large demand for labour to cut flowers in a short time period. Labour agencies then require access to extra workers, in addition to their regular pool, and so in turn sub-contract to smaller agencies. As the chains lengthen, so the possibilities for informality (and exploitation) increase. The situation varies by sector. It seems for instance that the sub-

contracting chain in contract cleaning is relatively short, while those in agriculture and construction may be longer.

These sub-contracting chains are important for migrants, particularly if they are working irregularly. They interlink with personal and community networks and can be important sources of employment. But it works both ways of course, and while much has been made of the importance of networks to migrants' movement and integration, little attention has been paid to how employers, agencies and other third parties can use these networks to access new pools of cheap, insecure labour. An interviewee cited the example of West African site cleaning supervisors:

*“it’s very easy if you have a recruitment problem to ask them to help and they put the word around their friends.”*

Such networks may extend transnationally, and be used to recruit workers from abroad:

*An informant described how a Portuguese labour co-ordinator for a high street employment agency telephones contacts in Brazil when there is a labour shortage, and arranges for people to come to the UK as tourists. They pay \$3,000 for the trip to an agent, then £150 for fake Portuguese identity cards when they arrive in the UK, and £150 to be registered in the agency.*

In such instances, formal and informal agencies and social networks are not readily distinguishable. Social networks may become “commodified”, when friends and contacts start demanding money for their services.

Migrants often find themselves at the end of long sub-contracting chains, with different intermediaries needing to make a profit margin on their labour – not just the end employer, but the employment agency and the gangmaster. How different people take their cut varies widely. Although the Employment Agencies Act of 1973 makes it illegal for agencies to charge workers for finding them employment, this seems to be a common practice. In a TUC undercover investigation in March 2004, two men posed as new arrivals from Brazil and Mexico wanting to work without authorization. Of six London agencies they visited, only two said they would not charge fees. One agency said that a waiter’s job would cost £100, and a kitchen porter’s would cost £50. There are many such kinds of informal practice. Those who are working irregularly may have money taken from them by compatriots to “introduce” them to agencies, or be subject to wage deductions by agencies for unspecified “administration charges”. Undocumented workers in particular find themselves exploited in this way.

Issues around sub-contracted migrant labour in the UK have coalesced around the Gangmaster Act. Gangmastering is a form of sub-contracting labour requirements, which is predominant in

certain parts of the country, notably the Spalding-Boston area of Lincolnshire<sup>44</sup>. Gangmasters specialise in both cheap and flexible workers. As one insider put it:

*“a lot of disreputable gangmasters employ [irregular] labour for a good reason, that it is cheaper than [regular] labour.....at least they can make more profit out of it”.*

The profits are high enough for mafia-like networks to have become involved:

*“when I was in East Anglia I heard reports from gangmasters who had been phoned up and asked if they would take thirty labourers, and on querying it were told: no, you don’t understand, you will take them”*

A recent attempt to pilot a code of practice for gangmasters found that subcontracting in the food manufacturing sector was extensive and included a range of degrees of abusive employment relations, including debt-bondage, illegal deductions from pay, and breaches of minimum wages laws (Ethical Trading Initiative, 2004: 21).

Indeed there is a suggestion that gangmasters who pay minimum wages price themselves out of the market in some areas. According to the same insider, in such areas:

*“it’s actually very difficult to be a legal gangmaster. If there are a sufficient number that are illegal they’re bringing the price down. The packhouse [to which the gangmaster is supplying labour] may have ethical standards, but they also have people charged with making a profit on a particular unit.”*

Gangmaster businesses require workers who are willing to work at a moment’s notice in exhausting and frequently dangerous conditions, and able to adapt between short and extremely long working days. Moreover, this workforce must be compliant with employer demands: any refusal would risk suppliers failing to fulfil the supermarkets’ orders, and cannot be tolerated. The gangmasters’ workforce does not necessarily work only in agriculture, but may be moved between sectors, for example between agriculture, construction, contract cleaning and hospitality. By no means all gangmaster-supplied workers are working irregularly. For example, there are many examples of Portuguese nationals supplied by gangmasters in Norfolk (CAB evidence to the EFRA Select Committee, 2003).

This proliferation of sub-contracting creates a grey area, where the formal and informal economies and networks mesh and labour exploitation can emerge and prosper. Long sub-contracting chains can result in serious ambiguities in the employment relationship. For example, it is often not at all clear who is the real employer and where responsibility lies for employment conditions and basic health and safety provisions. In some instances, the agency merely supplies workers for directly employment by the employer, while in others the workers are employed by the agency – or by a sub-sub-contractor. Such confusion makes for a grey area, where reputable

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<sup>44</sup> One estimate suggests there are currently 20,000 workers employed by gangmasters each year in the sixteen mile stretch between Spalding and Boston and an additional 20,000 between Spalding and Ely (in Cambridgeshire) (Source: Mark Simmonds, MP for Boston and Skegness, Hansard 27<sup>th</sup> February, Column 523).



employers and end-of-chain agents can throw up their hands at “irresponsible elements” who “fool them” into accepting workers whose status is irregular, or who are otherwise abusing their labour.

v. Conditions of work and pay

Conditions of work are difficult in all the sectors. The Health and Safety Executive describes construction as one of Britain’s most dangerous industries and evidence from elsewhere suggests that sub-contracting further increases these risks.<sup>45</sup> In 2002/03, 71 construction workers died and 4,098 suffered a major injury. What is more, the Health and Safety Executive (HSE) acknowledges that only 5 per cent of work-related injuries experienced by self-employed people are reported by them, due in part to the fact that the self-employed cannot claim compensation. As we have seen above, the self-employed represent a significant proportion of construction workers.

The project-based nature of construction work combined with informality results in non-payment of wages being endemic. Agents may claim that the client has not paid them, and that they cannot therefore pay the worker, or they may simply disappear. Non-payment, or payment less than the agreed rate, was presented by interviewees as a fact of life in construction.

In agriculture, there have been reports of appalling working and living conditions of migrant workers in some instances, in the growing, packing and processing of fresh fruit, vegetables and cut flowers. The Health and Safety Executive record that agriculture has the highest rate of fatal injuries of all sectors and there is evidence that the physically demanding and repetitive nature of the work causes a range of health problems, including severe back pain. According to one Ukrainian worker:

*‘Our work is very difficult. Standing bent over all day is very hard and painful. One colleague of mine developed some problems with his back because of the job. And when he had to take one day off because his back hurt him so much he couldn’t work they fired him. You have no right to be sick here, sometimes it feels like we’ve got no rights at all, even though we are here completely legally’.*

*(TUC 2004: 17-20)*

The CABx approached for this study found workers being exploited in the agriculture and food packaging industries. They all identified a particular problem that had arisen within their locality relating almost exclusively to Portuguese citizens.<sup>46</sup> There was a clear pattern from the limited information in the questionnaires indicating the following: sub-standard living accommodation, poor wages, deductions from wages and threats against workers. The existing fragmentary evidence indicates that forced labour may well be widespread.

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<sup>45</sup> Se Azari-Rad 2003; Debrah Y and Ofori G 2001.

<sup>46</sup> It should be noted that, given that Portugal is a member state of the European Union (EU), Portuguese citizens have the right of “free movement” in other member states including the UK. “Immigration status” as such is not therefore the dominant issue as there is protection under European law for EEA nationals when coming to live and work in the UK. Yet the efficiency of this protection is questionable considering the issues brought up by the CABx.

Contract cleaning has certain particularities. Cleaning staff who were previously directly employed are now dependent on a contract negotiated between a client and a firm, a contract in which they have no negotiating power. Not only does this mean that cleaning work became more insecure, it also means that terms and conditions of employment declined (Rees and Fielder: 1992). Cleaning is not performed in front of the general workforce, as it tends to be undertaken out of conventional office hours, nor is it managed or employed by the same structures as other workers on the site. These factors contribute to isolation in the work, making workers highly dependent on their supervisors with whom relations can become very personalised, leading to potential abuse. One interviewee even gave her supervisor cooked meals, in an attempt to stop her bullying and to put her on to a permanent contract. Supervisors control access to work, can determine the kind of work done and can even get somebody sacked. But they also personally know their workforce and, immigration and employment status can be used to the advantage of the supervisor:

*An informant told us that one supervisor from Latin America has to recruit all the cleaners her agency hires. She does this through contacts, and reports that she's seen many managers promise to pay employees once they sign a contract knowing that they will not have the necessary paperwork. The workers start the job and by the time they've discovered that they can't produce the documentation they may have worked for several weeks for no pay.*

CABx also noted instances of non-payment of contract cleaners.

Care assistants rank as one of the lowest paid jobs in the UK. The work is physically and emotionally demanding and given little respect. Care assistants and nurses are also subject to highly personalised relations with their supervisors, particularly when they live on-site. "Living in" is a solution to the 24 hour-demands of care work, and live-in careworkers are particularly prone to working excessive hours. The advice agency Kalayaan similarly found that migrant domestic workers in private households report working an average of 17 hours a day (unpublished statistics, available from Kalayaan, London). Overtime was also forced with immigration threats: we came across an instance of a Sri Lankan woman who often had to work two twelve hour shifts back to back, unable to refuse because her employers knew that she was working irregularly.

Employment relations in the private care sector are very individualised. Owners and matrons who are "employee friendly" have been recognized as key to improving staff retention. Those in positions of authority have a great deal of power over other employees. Live-in workers who lose their jobs also lose their accommodation, and may also find that other aspects of their lives – access to food, personal hygiene facilities, telephone – come under the regulation of the manager or owner of the home. This can result in considerable abuse. One woman spoken to found her food intake controlled, she was not allowed to cook and was subjected to constant racism. Her contact with life outside was severely restricted.

A further form of exploitation was uncovered in the research. Both private homes and NHS trusts may obtain work permits to employ nurses, but nurses who have received their training abroad are usually subject to a probationary period to "upgrade" on the job, during which they are paid

as care assistants. Once they have completed this “adaptation”, which is supposed to last between three and six months, they can register with the Nursing and Midwifery Council and have the right to practice as nurses, and be paid on the nursing pay scale. While the home is responsible for declaring that the nurse has completed the adaptation and is competent to practice, there is an obvious financial incentive for the home to delay registration, continuing to pay on the lower scale. Such delays were encountered in the research. Nurses in this situation feel unable to complain, as they absolutely need the registration. This is not least because they may have to repay debts taken to come to the UK. Indian nurses spoken to had paid some £3,000 and the difference in pay between a care assistant and a nurse greatly influences their ability to repay the loan.

Once again, we see that the prevailing work conditions in the sectors under examination, may well lend themselves to situations in which labour abuses unfortunately go unchecked.

## 4. FORCED LABOUR EXPLOITATION IN THE UK

### 4.1 Cases of forced labour and forms of coercion

This section examines the various forms of coercion encountered in the primary and secondary material analysed for this study. Forced labour is analysed by considering the forms of coercion used to retain a worker. These can be physical and sexual violence, threats of violence, debt bondage, threats and intimidation based on immigration status, blackmailing, and confiscation of identity documents or withholding of payments. The use of these forms of coercion is made more effective if the migrant is dependent on an agent or employer, either because of incurred debts or the restriction of work permits. This dependency may be actively fostered to increase control over the worker.

#### *Violence and intimidation*

The use of violence can have several aims: To force a migrant to work, to stop him/her from seeking assistance, and to assert control over a victim. An example of violence with the intention of forcing someone to work is illustrated below:

*Two Polish construction workers described how they were brought by agents to the UK. They were told that they would be provided with housing and employment, and that they could pay their agent later. On arrival in the UK they were moved around, put to work for long hours, closely monitored, and paid no money. They attempted to run away, and were badly beaten in the fight that resulted, but they did manage to escape and slept in Heathrow airport for two days. They were however terrified that they were going to be discovered “I wouldn’t have survived long there, not because I couldn’t work in construction but because of these guys”.*

Violence is also used to prevent migrants from raising issues or making complaints. Several interviewees of the Citizens Advice Bureaux, who dealt with migrant workers’ cases, raised physical violence as a subject of concern, even for those workers with legal rights of residence and work. In one instance CAB workers themselves felt intimidated as identifiable members of the local community. Another bureau commented on how they had a steady stream of complaints about a large employment agency, yet none of the migrant workers was willing to take the case further. As the bureau commented:

*“They never choose to pursue action... even though detailed advice about their right of action has been given. We have commented privately among ourselves that this appears strange and we have wondered whether clients fear violence if they dare to enforce their rights. However, we have no evidence that this is the case”.*

Physical abuse may also be simply an assertion of power and control rather than having any direct and immediate purpose. Low level and constant physical abuse was described by some workers, which put them under considerable stress. One example is given below:

*A care worker was regularly made to stay late, and to stand in front of the supervisor while he wrapped up balls of paper and threw them at her. After 8 months she had to take leave because she was physically sick with stress, yet, since she was a work permit holder with no recourse to public funds, she was not eligible for statutory sick pay. Her supervisor threatened that he was going to send her back “home”. Eventually she left and is now working without a permit, in a different part of the country.*

Violence is also often combined with threats and intimidation. Threats related to immigration status appear very common, for example threats to denounce the worker’s irregular status leading to arrest and deportation, as illustrated by the case studies below provided by legal experts:

*Three nationals of South Asian countries who entered on legal permits to work for an employer in the manufacturing industry were threatened with violence when they refused to accept their working conditions. They were required to work 12-hour shifts from Monday to Friday and a 9-hour shift at the weekend followed every day by cleaning the employer’s private residence. Their employer refused to negotiate and threatened to deport them. When they eventually managed to escape from him he contacted the Immigration Service to inform them that they were in the UK without work permits.*

The following case, widely reported in the media, illustrates how various forms of coercion can coincide and effectively prevent workers from leaving the employment:

*In February 2004, Greek workers were brought to Cornwall to pick daffodils. Some of the flowers were picked for Winchester Growers, a major supplier of flowers and to retailers including Sainsburys, Tesco, Marks and Spencer, Homebase and major garden centres. The daffodil pickers, however, claimed they had been subjected to “slave labour conditions”, labouring 10 hours a day in the rain and snow and being given cans of dog food to eat. They slept in tents and unheated sheds, which on inspection were described by the local authority head of planning and building control as “totally unfit for human habitation”. They allege that they were physically beaten and threatened by armed thugs when they said they wanted to return to Greece: “They called me in and said to me, ‘Do you know what it means to be involved with the mafia?’ So I said no and they showed me guns and told me no one was leaving” They finally obtained a telephone card and contacted their village in Greece. Friends from there in turn contacted the Greek Embassy who arranged to help them escape. The managing director of the agency that supplied the workers claimed that “They simply couldn’t do the work and they made up these stories as excuses so they could leave”.*

*Story reported in The Independent February 13<sup>th</sup> 2004.*

In one other incidence, violence was combined with debt-bondage:

*In 2003 a group of Eastern Europeans were brought to the UK by a gang to work illegally in a factory. They were originally informed that they would be working with permits, but en route were given false British passports. When they realized that they would be in the UK illegally they attempted to leave the gang's control, but were threatened so seriously that they were forced to continue. On arrival they were informed of their conditions: that they must work seven days a week for one year with no pay because they needed to repay their "debt" incurred for various expenses, including those related to migrating to the UK. Their salaries were transferred into the bank account of a gang member. They were watched very carefully, moved from house to house, and kept isolated. If they broke any conditions - if they spoke to anyone for example - they were fined and this was all noted down in a book and added to their "debt". Control was maintained by beatings and physical assault. Conversations with family back home were monitored, and knowing that relatives were set to follow them to the UK one woman managed to tell her husband not to come. The gang controlling them threatened him and told him that his wife would be killed if he didn't join her, so he came.*

Debt-bondage was the form of coercion most often encountered during the course of this study. This occurs often when a migrant without the financial means to organise a trip abroad is offered a loan, often subject to exorbitant interest charges, which must be paid back after starting work. The debt is consequently used by the recruitment agent or employer to exercise control over migrants and subject them to exploitative conditions of work.

*One woman had borrowed US\$1,000 for her trip and had not yet managed to pay this off, despite being in the UK for nearly 4 years. She is currently paid £2 an hour to work in a chip shop for 12 hours a day. From Monday to Saturday she lives on the chips, but on Sunday must pay for her food. Sometimes she works as a barmaid with no pay but for a free meal.*

*Interview conducted for COMPAS accession project*

*A Filipina who had been told by her aunt, a UK resident, that she would be able to work legally. She sponsored her, guaranteeing to support and accommodate her. On arrival however the young woman was forced to work as a contract cleaner, using her aunt's name and National Insurance number. Her pay was being paid into her aunt's bank account and she was receiving no money from her aunt at all. She was only allowed out to work and was kept deliberately isolated. As well as her night cleaning job she had to perform all the domestic work in her aunt's house and look after the young baby during the day.*

Though debt bondage as in the above case can result in the non-payment of wages, it can also be a coercive means of keeping the migrant in the employment relationship. Non-payment for work was common among our interviewees, and is also commonly described in press reports and by advice agencies including the CABx. This is particularly rife in short-term jobs in agriculture, manufacturing and construction, though in the case of contract cleaning it seems to occur even in longer term arrangements. It is not uncommon for migrant workers to receive verbal promises of payments in arrears, only to discover weeks or even months later that no such payment is forthcoming (CAB 2004).

Restriction of movement is also a common means to keep workers in employment. This is often achieved by retaining identity documents, while at the same time threatening the worker with denunciation to the authorities.. Migrants in turn do not dare to leave the employment without their documents. The new offence created by Section 2 of the 2004 Act, criminalising those who enter the UK without a valid travel document may make migrants even more reluctant to leave such employers. Sometimes, however, they resist as the following case indicates:

*“My employer kept my passport. He kept it in an attaché case, locked. I never tried to get it. The first year we came here, one colleague jumped and they started to hide our passports in case we jumped too. They thought I would be too scared to jump without my passport but it didn’t work. When I left I was worried about not having a passport. After two months, my solicitor sent a fax to my employers and asked for my passport. There were seven of us who jumped. I was the only one who got it. The others were too afraid to ask for it back as the employer said we had stolen from them and that they had hired police to search London.”*

*Filipina domestic worker in private household.  
Cited in Kalayaan report 2003*

Employers and agents may not only attempt to control migrants at the workplace but also in their private lives. They often make a profit from accommodating them and so this can be provided for workers. However, this means that the migrant is not only dependent on the employer or agent for work, but also for accommodation, and sometimes even basic necessities such as food. Agents or employers may foster this type of dependency with the intention of using it to prevent worker from leaving indecent work. Intimidating visits by agents were described by several of our interviewees, with agents entering accommodation, with their own keys in some cases, in others demanding entry with threats. One couple, who were in accommodation provided by the agency, fell sick and were told that, since they were no longer working, they had to leave the house.

*‘We were in the living room watching TV, felt someone putting key in latch. There were three men, two went into the back door and started changing locks. Another had a very aggressive attitude, you have two hours to leave’.*

These cases illustrate that coercion may affect migrant workers in very different ways and to various degrees, but what is common to all cases is that the victims believed that they were not free to leave or change their present employment relationship. Most of them have been deceived during the recruitment process. Moreover, the double dependency on agents and employers exacerbates their position of vulnerability. The cases also illustrated that forced labour is a process, leading from deception into more direct forms of coercion. In practice, however, it is very difficult to distinguish between a “free and consensual” and an “unfree and coerced” employment relationship. Many migrants succumb to the exploitation because they believe they have no viable alternative.

## **4.2 Working and living conditions of migrant workers**

Substandard working conditions, though not constituting forced labour, can nonetheless overlap with certain elements of forced labour. For instance, while many workers may not choose to work as a cockle picker because this work is hard and dangerous, some migrants may perceive this as the only viable option. To the extent that the perceived lack of viable alternatives can be manipulated by an employer or agent, substandard working conditions can be very much part of a forced labour situation.

While some attention has been paid to the vulnerability of migrant workers to violence and threats exercised by individuals in positions of power over them, the physical dangers posed by working conditions and disregard to health and safety matters have gone unexamined. The fact that the multiple deaths that have hit the headlines have been treated as “gangmaster” tragedies has possibly distracted attention from the working conditions experienced by migrants and the associated health and safety issues.

Yet the media has reported more than one case where migrant workers were experiencing grossly substandard living and working conditions. One week after the deaths at Morecambe Bay in February 2004, 40 people were stranded near the site of the disaster, again caught by the tide. In December 2003 Morecambe Bay had been the site of a huge rescue operation when 30 cocklepickers became cut off after a tractor broke down. The deaths at Morecambe are by no means the only fatalities. In October 2002 two Polish workers in their twenties suffered horrific injuries and died when they became entangled with a rope reeling machine. They had been dismantling polythene tunnels used to grow strawberries and raspberries for supermarket selling. In July 2002 a young Hungarian woman working on a farm near Basingbourn died after being trapped beneath a fork lift truck. In February 2001 Ionut Simionica, a 22 year old from Romania was killed while working on a construction project at a church in Westminster.

Besides dangerous working conditions, excessive working hours are a serious problem for migrant workers in the UK. Live in careworkers are particularly prone to working excessive hours, and complain that they are treated as if they were permanently available even during rest periods. This mirrors statistics compiled by the advice agency Kalayaan which found that migrant

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<sup>47</sup> Interview conducted by Old Street Films March 2004, for Channel 4 News



domestic workers in private households report working an average of 17 hours a day on arrival in the UK.

Overtime was also forced with immigration threats: we came across an instance of a Sri Lankan woman who often had to work two twelve hour shifts back to back, unable to refuse because her employers knew that she was working irregularly.

While employers and agents do use immigration fears to force excessive or unreasonable hours on migrants it would be false to depict all excessive hours extracted by employers as forced labour. Some workers undoubtedly choose to work long hours. Those more formally employed may sign opt out clauses and accept the excessive working hours because they need the money:

*“They give you a form which says although the rule is you can only do so much, but if you want to do more you sign your life away. The minute you sign that form it gives them something to cover their back.”*

*“If you leave it (the job), what are you going to live on? They (workers) have no choice but to stay with it, you see some of them early morning cleaning, they do afternoon cleaning and some do nights, some work through the night. Then you see them drop dead at the bus stop because they are trying to make ends meet”*

*Nigerian contract cleaner*

The interviewee had herself worked formerly as a cleaner contracted to London Underground. She had for several years worked in a tube station from 6am to 4pm, and at the Royal Mail from 8pm to 4am.

High levels of insecurity of employment mean that workers are keen to maximize working hours. A Ukrainian worker agricultural worker described picking strawberries at piece rates:

*“At last, we felt we were going to have some real money for our hard work. So we all went out working as hard as the human body is capable of. One girl even fell unconscious, with blood running from her nose, her blood pressure had risen rapidly from exhaustion”*

*(TUC 2004:17)*

If working conditions related to health and safety matters are often substandard, the situation with regard to wages is equally worrying. Delayed and non-payment of wages are a serious issue for migrant workers, as discussed above. Low wages are also an important problem and many migrants may work for far below the minimum wage. For example interviews conducted for the COMPAS project found a Ukrainian woman collected glasses in a pub for £1 an hour, and a Ukrainian man was paid £1.50 an hour as a “carrier” in a factory. We interviewed an Indian construction worker earned £20 for a nine hour day. Moreover there are press reports of migrants picking cabbages in Littlehampton for £20 a day, coriander in Norfolk for £10.35 a day, or daffodils near Plymouth for £1 an hour.

It is important to examine some of the mechanisms by which significant deductions are made from the wages of migrant workers. In the case of some agencies where the employment of irregular migrants is more organized, the gangmaster or third party will offer a secure payment of a fixed sum of money, for example £150 per week. Some mainland Chinese workers have been remunerated in this way, through a “package deal” accepted because of its stability even though it translates into extremely poor hourly rates.

Wage deductions may be made by employers, agencies and third parties – and more often than not a combination of all three. Migrants may be promised a certain sum at the time of recruitment, only to find on arrival that they receive far less after deductions are made. In the worst cases of the most severe deception, they may actually receive nothing at all. They can potentially find themselves in debt bondage situations if – as in one reported case - the fees charged by the agency are larger than the amount earned over a reasonable time period.

The study found that there are four broad categories of deductions from wages: (i) deductions to “repay” migration debt including travel, visa and documentation costs, and the interest accrued (ii) deductions for the opportunity to work (iii) deductions for accommodation, and (iv) deductions for work related costs such as uniforms, transportation or safety gear. These types of deductions can be related to a credit given by the agent or employer.

Exploitative deductions from salary, as well as deception over wages, occur in the case of regular as well as irregular migrants. Cases of “contract substitution” have been reported, where the holders of work permits sign one contract before entry to the United Kingdom, and upon arrival are subsequently forced to sign another contract with significantly reduced pay and conditions. Nurses in particular complain of such contract substitution, and also of penalty clauses, as illustrated in the following cases.

*One lawyer reported to us the case of a Chinese man who entered the UK on a work permit to work in private health care originally signed a contract that gave him £14,000 salary. It was on this understanding that the work permit was granted, and that he agreed to work in the UK. However, after he arrived he was informed his salary was going to be £10,000. The worker eventually took the case to an employment tribunal, which found in his favour, but the employer still persisted, and the worker had to leave his employment.*

*A group of Indian nurses we interviewed had to pay £2,000 if they left their employer and this practice has been reported elsewhere.*

For newly arrived migrants access to any accommodation may be a priority and they may have little option but to accept sub-standard accommodation provided by employers or agents. Two of the nurses interviewed were informed that there was no accommodation available in the care home where they were to work. Instead, they were housed in a warehouse on an industrial estate, unsuitable for human habitation and ninety minutes walk from their workplace. Without money for public transport, they described feelings of desperation as they walked in the rain to the workplace.

It has been seen earlier that accommodation can be used as a means of control over workers. Incidences have been reported of workers being denied work if they did not take up the accommodation being offered and its associated charges. Conversely, accommodation can be used to prevent workers from changing employers. Workers living on site can more easily be obliged to work excessively long hours (see Chan and Ross, 2003, for evidence of this in Chinese garment factory employment). But it can also provide additional earnings for the employer or agent as with the example of the nurses above. The incentive to overcharge for accommodation (the maximum legal deduction for workers on the minimum wage at the time of interviews was £24.50 per week. This was increased to £26.25 on October 1st 2004) is great and much of our evidence in the previous sections suggests that employers/agencies both overcharge and overcrowd. The standard of accommodation is consistently low - workers end up hot-bedding and sharing a small room with several others. Migrants' dependence on employers and agents for accommodation may also result in secondary profit generating activities. For example, agencies may also control their transportation arrangements to employment, and again this may be a source of profit.

The evidence presented in this section illustrates that the boundaries between exploitation and forced labour are not always clear-cut. Each case requires careful analysis in order to understand to which degree the migrant worker has been deceived and coerced during the migration process and in the final employment relationship. The analysis also revealed that each migrant worker reacts differently to coercion; some may successfully resist and others succumb. It became also evident, however, that there are structural factors that are beyond the control of the individual worker and that contribute to his/her vulnerability.

### **4.3 Vulnerability to forced labour**

This section will have a closer look at the vulnerability factors that put migrant workers at risk of exploitation and forced labour. Each factor can lead to forced labour and other forms of exploitation by the employer or an agent to recruit or keep a migrant in indecent working conditions. The main theme underlying all vulnerability factors is that of dependence. The majority of migrant workers may be heavily dependent on personal networks, employers, agencies and other third parties, not just for employment, but for food and shelter, access to health care, information about their rights and so on. The research identified three factors that individually or in a combined fashion create vulnerabilities: *dependency on recruiters* for information and access to migration channels; *immigration status* and physical as well as psychological *isolation*.

#### *Recruitment*

Vulnerability to forced labour outcomes of migration usually starts in the country of origin. The lack of legal channels combined with a lack of resources and strict border enforcement by countries of destination means that migrants are often dependent on third parties to migrate (see for example Gao Yun 2004, on the role of intermediaries in Chinese labour migration to France). The proliferation of targeted migration schemes as a response to the particular requirements of the British economy with ever more complex checks and balances to counter perceived public

apprehension has led to an increase in reliance on agencies, formal and informal, to enter the UK (Flynn, D 2004, Morris, L 2004).

Information from the CABx showed that even signed contracts abroad, as well as the terms set out in job advertisements, are ignored or even deliberately changed after the individual's arrival in the United Kingdom. Agencies, which recruit, transport, accommodate and liaise with employers, can be responsible for the exploitation. In some cases, nearly everything that the worker earned went to the agency, leaving the worker with virtually nothing. The employers take no apparent responsibility or even acknowledge the problems that migrant workers face.

If migrating via informal channels can enhance control over workers, even those having migrated using legal channels are not immune to exploitation and forced labour by third parties, as the example below illustrates:

*An interviewee who had legal status complained to an agency about excessive fees. She was told by the agency that they had assisted some of her co-workers in falsifying documents relating to their employment history, and informed that, were she to persist in her complaints, these friends would be "ruined" and "re-deployed back home".*

Unscrupulous agencies may put migrants in exploitative situations that can put them at risk of forced labour by having to work irregularly to cover expenses. The following two case studies illustrate some examples of abusive recruitment and how this may lead to increased vulnerability to exploitation and forced labour:

*Six women were interviewed who were among thirty nurses recruited by an agency to train and work in the UK. Their contract specifically states that they will receive a hospital training placement and that, as long as they obtain a satisfactory placement report, they will receive a contract to work in a British hospital for more than three years. The cost of this was £10,000<sup>48</sup> each – "more than we would earn in our whole lives" as one of them put it – necessitating large loans...on arrival they were placed, not in a hospital, but in a further education college, having been recruited, as far as the college was concerned, as international students. Their student visa means they can work just enough hours to finance the £60 weekly fee and £87 monthly accommodation charge.*

*The same agency, a UK registered company, was also involved in recruiting 14 Chinese nurses in Tyneside in 2002 at a cost to the nurses of £9,000. Eight months later, 10 of them were working as cleaners and dishwashers and even being sent money from their families in China to help them make ends meet.*

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<sup>48</sup> In the contract this was described as paying for: registration with the agency, UKCC application fee, fees for obtaining documents for visa application, academic registration fee, tuition fee, half-year hospital placement fee, fee for preparing visa application, visa and work permit fee, one way ticket to UK, overseas service charges.

When there is a collusion, whether intentional or not, between recruiters and employers, or a relationship between the loan agent and the recruiter, migrants are particularly vulnerable to abuses. This is illustrated by the case study provided by a legal expert of Conrado, a highly qualified nurse from Asia:

*Conrado was among many who were approached by a UK based company, X, with offices in an Asian city. Applicants are interviewed by agency staff, and the videos shown to prospective employers/agencies, who may then select applicants they are interested in interviewing further. Having waited for up to one year for the initial interview he and his friends were told some days beforehand that they had to pay some £200 each for the production of the interview video. After passing the pre-selection test they were offered a further interview, this time by a different UK based agency, Y. The Department of Health has provisionally listed this agency, Y, as one abiding by the Code of Practice for NHS employers involved in international recruitment<sup>49</sup>. This interview was conducted over the internet, and cost a further £200 a head – apparently for renting the room in the hotel which the internet conferencing took place. Some 32 nurses were selected, but they were then told that they had to pay a further £300 for the work permit and placement fee.<sup>50</sup>*

*Having paid a total of £700 – for which no receipts were given, they were then informed that they need to raise one month's deposit and one month's rent for their accommodation on arrival in the UK. Conrado described himself as feeling quite desperate by then, and having already made a serious financial commitment it seemed impossible to back out. The nurses were not told that the Trust had a policy of giving migrant nurses an advance payments of £500 on arrival. Nor were they told that their accommodation was in fact being provided to them by agency Y.*

*“We were all drained in terms of the finances and this was the exact timing wherein the name of finance company “G” have offered a loan of £1,500 with a net loan of around £1100 with a monthly payment of £302. Desperate to grab the opportunity we took the loan even if we knew that almost nothing would be left from our salary and besides we're not in the position to decline the offer.” The company G is a British based finance*

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<sup>49</sup> This refers to the list last updated on 14<sup>th</sup> June 2004. In order to be placed on the list agencies need to provide two references from NHS organisations who have used their services. Some agencies, including Y, have only been able to provide one reference and so are only provisionally accepted. Y's reference came from the NHS employer whose actions are detailed in this case study.

<sup>50</sup> The Department of Health code of practice states explicitly that (1) NHS employers should not work with agencies who charge fees to candidates to be considered for recruitment in the UK, and (2) that NHS employers should satisfy themselves that UK commercial recruitment agencies with whom they contract are not in any partnership agreement with agencies in other countries who allow fee charges to individuals solely for the purpose of a placement in the UK (Department of Health **Code of Practice for NHS employers involved in the international recruitment of healthcare professionals**).

*company, affiliated to the original recruitment agency X, and specifically set up to provide loans to professionals. The finance company director shares the surname and address of the director of agency X.*

*When the nurses arrived in the UK they were given tenancy agreements to sign. They had not yet seen their accommodation, but signed, “Our employers were there and did nothing”. After two months the nurses found that they were unable to pay for the accommodation and give themselves an adequate diet. They approached their nursing manager for advice, but were told that this was a matter that needed to be arranged directly with their accommodation agent and was not something in which their employer could intervene. Having taken advice from a legal agency the nurses decided to pay the going rate for their accommodation, and changed the amount accordingly. They were then called in to a meeting in which both their manager and their recruiter/landlord were present. They were informed by their manager that if they did not pay the full house rental they would have proven themselves “not trustworthy” and that the NHS Trust therefore would not support their application to register to practice nursing in the UK. Forms had been prepared authorizing the deduction of their rent from their salaries, and they were told that if they did not sign, they would not be registered: “We were caught between the fear of being sent home and the fear of not paying back the debt, when the interest is getting higher all the time”.*

*The nurses signed the authorization. This money, together with the recruiter’s loan, was deducted at source by the NHS Trust. So, while the nurses’ average net salary was £805 exclusive of tax, the amount they received, after deductions of £305 for rent and £302 for loan repayment) was £198, or £46 a week, from which of course they also had to pay the loans incurred for video interviewing and visas. Conrado described how he lived on £5 worth of food in a week, having an apple for breakfast, a snack in the staff canteen for lunch, and rice for dinner. He felt that he was relatively fortunate because he lived close enough to the hospital to walk.*

The costs of coming to work in the UK are considerable. Some Chinese workers are paying as much as £15,000 for travel and entry costs. They include transportation and the costs of visas as well as, for some, initial costs on arrival when one is paying for food and shelter but does not yet have a job. Workers who came to Cornwall to pick daffodils for instance returned to Greece with no money as they had been told that they had to pay off £1,000 per head before they could earn their promised £33 per day. In one of our case studies, Eastern Europeans working in a factory were told that their debt amounted to one year’s worth of work. In conclusion, repayment of accrued debts for migration costs can mean that migrants are effectively working for no payment at all.

### *Immigration status*

As already seen, immigration status can be used in combination with threats to keep a migrant in forced labour. Those working irregularly report employers and agencies threatening to call, or even actually calling, immigration officials in order to avoid payment for work or as a response to workers complaining about their conditions. Therefore, immigration status can put a migrant at risk of forced labour, as the examples below illustrate:

*A Polish hotel worker for example described seeing a replacement group of workers waiting in an agent's car, while he and his colleagues were being taken away by immigration officials that he believed the employer had called to avoid paying them their wages.*

*An informant described the case of sixteen undocumented Chinese workers working in a factory on sixteen-hour shifts for 20 days. The factory managers then called immigration when they had finished with them and they were deported, thereby avoiding payment of both the workers and the agency.*

A migrant with an irregular immigration status falls more under the control of the recruitment agent or employer. However, those in possession of a valid work permit are not exempt from abuse by employers or third parties. Those in the country and with the right to work may have their passport retained by the employer or may be forced to breach their conditions of stay. In such situations they may not know their immigration status or when their visa expires. Therefore the lack of knowledge of rights and national legislation can put a regular migrant worker in a vulnerable situation, which can be used by the employer.

Another important vulnerability factor related to immigration status is the fact that the work permit ties the migrant to the employer. This means that if the employer fires the migrant, the latter will lose the work permit. A nurse in this type of situation illustrated how such dependency can lead to indecent work:

*"We suffer in silence because of our status. If we had permanent status we would have courage to say no. The problem is we are tied. It is clearly written in the front page of the work permit"*

The relationship between immigration status and access to the labour market is extremely complex (Morris, L. 2004) and there are certain immigration situations where coercion or exploitation in the field of employment are more likely to occur. In order to shed light on the relationship between vulnerability to forced labour and immigration status, the different regular immigration statuses are considered from a vulnerability perspective in the box below.

### **Type of immigration status and vulnerability to forced labour**

#### *Work permit holders*

Work permits are obtained by an employer, not a migrant, and therefore migrant workers are tied to the employer by the work permit. Those employed under work permits cannot take employment

except as specified in the work permit, and if at any time the employer decides that they do not require the worker, they lose their job and their right to remain in the country. Those employed under these conditions therefore are extremely dependent on their employer, not only for their job, but for their right to remain in the UK. Nurses usually enter the UK on work permits. There are more difficulties for those working in private nursing homes as they are limited to working for a single home, while those working in the NHS must work within the Trust but can change hospital. However, we came across an instance of a private nursing home paying another home a fee (£2,000) in order to get their permission to transfer a work permit. Work permit holders are not entitled to state benefits, and this includes statutory sick pay.

#### *Temporary workers*

It is possible to enter the UK to work in certain sectors where there is an established labour shortage. Students who wish to work temporarily may enter under the Seasonal Agricultural Workers Scheme (SAWS), while those aged between 18 and 30 may apply to work with employers in the hospitality or food processing sectors under the pilot “Sector Based Scheme”. Neither of these systems may lead to long-term settlement. Community organisations report that some of the permits for new schemes are sold. For example, there was a case of Ukrainian workers paying between \$1,000 and \$2,000 for a visa under the Seasonal Agricultural Workers scheme (TUC 2004). Immigration practitioners reported instances where Sector Based Scheme (SBS) visas were sold by employers to the highest bidder for amounts it would be impossible to recoup in the twelve months stay legally permitted by the scheme. Independently, workers described arriving and finding that their “employer” has no position available and they must find another job to pay off the debt incurred for the visa. Transference of SBS visas is not permitted and they are therefore unable to work legally.

#### *A8 Nationals*

On 1<sup>st</sup> May 2004 ten additional European countries became members of the European Union. Accession state nationals who had entered or were working in the UK with or without permission acquired the right to live and work in the UK. For those working without permission (many in construction, agriculture and hospitality), May 1<sup>st</sup> was in some ways an amnesty. However, nationals from eight<sup>51</sup> of the ten accession countries must obtain registration cards for the first 12 months of their employment in the UK (hence “A8 Nationals”). Some have reported that the combination of registration and lack of a National Insurance number (which can take several months to get) means that there are employers and agencies that are offering them work at significantly reduced pay with the excuse that they will have to do a lot of bureaucratic work. We also interviewed A8 nationals whose employers had refused to register them. Given the experiences of some EU nationals it should not be assumed that post May 1<sup>st</sup> 2004 A8 nationals are free from abuse and exploitation.

#### *Students*

These represent the largest category of entrants to the UK. They may work 20 hours in term time and 40 when they are on holiday, but there are migrants on student visas who are in the UK principally to work, as well as students who are here to study but who work in excess of their allotted 20 hours. Some colleges enrol students without providing any lessons thereby facilitating the provision of visas which have allowed the holders limited opportunities for work. The colleges are of course paid for the “lessons”. In some cases employment agencies deduct school fees directly from migrants’ pay packets.

#### *Visitors*

People who require visas to enter the UK must prove that they can maintain and accommodate themselves without recourse to public funds. For many people this requires commitment from friends or relatives, which can trap them in exploitative situations (see case in section 3.2).

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<sup>51</sup> Poland, Czech Republic, Slovak Republic, Lithuania, Estonia, Latvia, Slovenia, Hungary



### *Asylum seekers*

Asylum seekers who are not detained are not permitted to work unless the Home Office grants special permission. They are allowed to undertake “voluntary work” and be reimbursed food and travel costs. For example, In Glasgow trained nurses who were unable to work because they were asylum seekers were “volunteering” to work as unpaid nurses in NHS hospitals (Glasgow Evening Times October 13<sup>th</sup> 2003). Accommodation and the means of subsistence are disbursed to asylum seekers through the National Asylum Support Scheme (NASS), but under the notorious Section 55 of the Nationality, Immigration and Asylum Act 2002 asylum seekers who do not make their claim “as soon as reasonably practicable” may not be covered by NASS. A report by the Greater London Authority found that in London some 200 people a week were likely to be made destitute by Section 55 (GLA 2004). Confronted by such circumstances some asylum seekers feel they have little option other than to take poorly paid work in the informal economy. Asylum seekers in Glasgow have been found working in factories and in the sex sector for £1 an hour and paying middle men one third of their wages to get access to work<sup>52</sup>

Many migrants, and employers, do not understand the complex regulations and laws surrounding residency and employment status of migrants. Moreover the often-cited distinction between “legal” and “illegal” migrants may not always be clear. For instance, some people may be legally resident but not permitted to work, or permitted to work but subject to certain restrictions, others may be overstaying their visa or have entered without proper documents. Some may also have entered on legal schemes but may have been required to participate in dubious not to say illegal practices to do so, for example bribing officials to acquire passports, or paying for permits. The consequent confusion makes migrants susceptible to poor advice and vulnerable to exploitation.

### *Isolation*

Migrant workers may be isolated from broader British society by physical and temporal constraints such as night work, work in rural areas or behind construction hoardings. They can also be isolated by language difficulties and racism. Whatever their legal status, not knowing where to go for advice and support, being unable to consult with co-workers and not having access to basic information on rights and procedures can have a serious impact on employment conditions. The isolation of migrants and lack of information about their rights give employers and agents more control, and in some cases this isolation is deliberately created:

*A nurse who was living in a care home in a remote Nottinghamshire village was being severely bullied and overworked. She knew nobody who lived nearby and was forbidden access to the phone.*

Workers may even be prevented from communicating with co-workers or fellow nationals. Access to informal social networks, which can operate not just as an emotional support, but also as a means of finding assistance, may also be forbidden, as shown by the above case. The importance of isolation is clear from the cases of abuses against EU nationals, who are in theory free to work in the UK in the same way as British workers but whose employers successfully kept them in ignorance about immigration status and employment rights.

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<sup>52</sup> (see e.g. Mail on Sunday 26<sup>th</sup> October 2003).

Such agents/employers may view trade unions or other organisations as a threat precisely because they offer opportunities to break down isolation:

*A group of nurses was given an orientation by their recruitment agency the morning after they arrived in the country and were told that they were in no circumstances to join a union, and in particular, they were not to join UNISON. No reason was given for this. They were also informed that if they “broke the rules” they would be deported.*

Migrant workers arriving in the UK experience different degrees of isolation from society because of factors related to their work environment, but also because of a lack of knowledge of the local language and legislation. This puts them at risk of being misinformed by their agent or employer, who can use this to create a forced labour situation. More importantly, isolation that is deliberately contrived by the agent or employer means that victims are unable to complain and seek assistance, thus making it very difficult for them to escape forced labour.

## **5. LAW ENFORCEMENT AND VICTIM PROTECTION**

This chapter examines the application of existing law and policy, in the light of the findings presented earlier. In particular, it considers the linkages between effective law enforcement and the protection of victims. Thus a first section the assistance provided by different actors and institutions to victims of forced labour or labour exploitation. It looks at routes out of forced labour and severe exploitation, the reasons why migrant workers may be prevented from seeking assistance, as well as some of the difficulties encountered by organisations which have sought to provide it.. A second section then turns to some of the difficulties in law enforcement itself. This leads to a discussion of some policy dilemmas that now need to be addressed in the fight against forced labour and trafficking.

### **5.1 Assistance to victims of forced labour**

The Government has expressed its concern to support migrants in situations of forced labour. However, migrants who reported abusive treatment clearly did not feel able to report this to the authorities. Those working irregularly were convinced that the police would arrest them rather than the offender. Such concerns are not unfounded, as the case study below illustrates:

*Immigration officers raided a factory (mentioned earlier). The migrant workers, relieved to be free of the gang that controlled them, were terrified that, if they were deported from the UK, they would be subjected to punishment by gang members and be put into forced labour again to repay their “debt”. Although they gave detailed statements and supporting documentary evidence to the police and immigration authorities, no action has been taken against any gang member, and the workers are fighting removal from the UK.*

In our interviews we found a climate of insecurity and fear, a sense that one cannot do anything to protect one’s physical integrity if others are willing to exploit it.

*A young Ukrainian woman has been working irregularly for several years in the UK. She has endured two sexual assaults – one when she was lying extremely ill and with no medical attention – and continues to be subjected to constant sexual harassment in the course of her work. She believed that going to the police is “dangerous”: “They always want to know name and address and not what wrong was done to you”. She described herself as feeling “like a serf”, that there is no one worrying about her, and that all she can do is keep on working.*

*Interview conducted for COMPAS project*

Workers in the informal sector, whatever their immigration status, may be prevented from raising health and safety issues because troublemakers run the risk of being dismissed. Migrants also risk their immigration status, this presenting a further disincentive to report abuses.

*One HSE inspector reported a migrant worker commenting along the lines of: what is the use of standards and information, because if I complain my employer will sack me?*

If they have copied original documentation belonging to the employee, employers have a “statutory defence” against conviction for employing an illegal worker. The employees of such agencies and employers, in contrast, are subject to removal, whatever their conditions of employment. Therefore, the irregular migrants stand to lose a lot from denouncing the employer and agent subjecting them to exploitation and forced labour.

For migrants working irregularly legal enforcement of even the most minimum of employment rights is extremely difficult. Recently an asylum seeker working in breach of his conditions was unable to bring a discrimination claim against an employer because the employment contract was obtained by fraud.

*“The illegal conduct was... entirely that of the Applicant and it was the employer who was the innocent participant in what was in fact an illegal contract.”*

*UK/EAT/0565/03/RN*

The worker’s “illegality” meant that he had no right to bring a claim of discrimination. More generally the vast majority of undocumented migrants do not have access to the tribunal system, as bringing themselves to the attention of the authorities will lead to deportation. The Sharma v Hindu Temple case<sup>53</sup> is an important exception to this:

*Nineteen stonemasons were brought from rural India to work as stonemasons on a temple in Wembley. They were living in appalling conditions on the construction site and, despite having been told they would receive up to £190 a week, they were in fact being paid £125 a*

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<sup>53</sup> EAT/253/90

*month or 30 pence an hour. Their employers tried to argue that they did not have to pay the national minimum wage on the ground that the workers were undocumented, but the Employment Appeal Tribunal said it was necessary to take into account public policy, which was to ensure that all workers were paid the national minimum wage.*

Yet, even those who do not need permission to work may find little redress. The plight of the Greek flower pickers in Cornwall received extensive media coverage, but no police action was taken other than to “escort” the workers to Heathrow where they took a plane back to Greece. Some with legal status felt constrained by fears that their employer would remove their work permit, as illustrated by a quote from a Filipina nurse:

*“You are a slave, you can’t go, even if you want to.....If I knew beforehand, obviously I wouldn’t get into that situation... but when you are in the situation, the work permit holds you”*

Besides fear of arrest and deportation, there can be further barriers to appealing for assistance. For one thing, migrants may be impeded by language difficulties. After the Morecambe Bay tragedy for instance, commentators were quick to point out that the Chinese victims did not have local knowledge or the language to be able to read warning signs. Employers have a duty to explain and train around health and safety issues in a way that is accessible to the employee, but this obligation is not always met. Some elements of the care and construction industries are making efforts to deal with this including through making health and safety information available in different languages (The Schellekens Consultancy 2004). The relevance of the language barrier to health and safety concerns has been identified in other sectors, including agriculture and manufacturing, but little progress has been made. Arrangements to ensure effective communication of health and safety information often seem to be inadequate, not least because employers may not know the nationality or language group of their casual employees.

In certain instances migrants may be unaware of the required safety standards. Again this has been identified as a particular problem in construction, but its relevance is likely to be widespread. If a European Framework Directive currently under consultation on Services in the Internal Market is agreed by the European Parliament and Council of Ministers, non-UK European businesses providing services in Britain on a non-permanent basis may no longer have to comply with British health and safety law. They would have to comply with their own country’s laws and only HSE equivalent bodies of that country would be able to enforce the law in the UK.

Moreover, in the event of a fatality or accident there are practical difficulties with obtaining supporting evidence, as co-workers can be frightened to speak out because of their immigration status and dependence on their employer. Indeed, migrants have been reported as running away from HSE inspectors who are seen as an arm of the state, and therefore policing immigration status. This is so even for the victims of accidents as workers report stories of the victims of industrial injuries who have to go to hospital and are never heard of again, the implication being that they have to leave the UK.

*One informant described how agencies “discard you” if workers go to hospital or present to doctors themselves, because of the risk of consequent immigration checks. Others will take workers to medical establishments or doctors where they know they will not be checked and which are in a different area from the place where the accident happened. This was felt by the interviewee to be a means of protecting the employing establishment, and of ensuring continued control over the worker, who would be placed to convalesce in accommodation controlled by agents.*

Sub-contracting can make it more difficult to discover where responsibility lies. It is often unclear who is the employer of a person at the end of the sub-contracting chain. And as employers become smaller, so the possibility of adequate compensation decreases. Moreover, workers paid in cash may have no record of employment at all.

*One community association, which has a particular interest in health and safety matters, has taken up six cases of accidents at work. Only one has been successful, and even in this instance the employer denied that the injured party was an employee – he claimed he must have been standing in for a friend – but agreed to pay him the cost of his migration debt out of sympathy for his situation.*

Other employers have checked seriously injured workers into hospital under false names and then denied any knowledge of them. Even in situations where workers undertake the work under threat, they may have no means of redress when their fears are realized. The kitchen porter described in the case study below has received no compensation from his employer.

*One man was working as a kitchen porter in South London earning £100 for a 72-hour week. He was asked to take deliveries on a motorbike and, when he explained that he didn’t know how to ride a motorbike, he was told ‘It’s just like a bicycle’. He broke his spine and neck. The motorbike had no MOT and no insurance, and his employer denied that he was working in his establishment.*

Unfortunately, recently adopted measures against unlawful employment of migrants can have an unintended or perverse effect, further reducing their viable alternatives and compelling them to work in even more dangerous conditions. On 3 May 2004, journalist Hsiao-Hung Pai reported in the Guardian newspaper that 180 Chinese cockle pickers were working at Morecambe Bay, dismissed by anxious employers from other work in catering and factories:

*Many are ex-cocklers who know the harshness of the conditions and the dangers that go with them. But as their work choices are limited, they are all desperate to get back on the sands. “It is a matter of survival,” another cockler, Mr Lu, said.*

Exploitation, forced labour, and appalling working conditions can thus be perceived as the only viable option for the migrant worker. To appeal to the authorities or another type of assistance would be to eliminate this only option.

*One migrant worker had such a bad experience with a recruitment agency, including illegal deductions, lies, and extortion, that he reported them to the authorities. The operations of the agency were suspended. But he knew of people who had already paid money to the agent who were now being prevented from coming to the UK: “They are trying to take the first step out of poverty. I know what they are coming from. Did I do the right thing?”*

Despite this, legal advice and assistance can lead to the enforcement of statutory rights, such as the payment of minimum wage, although this, again, depends upon the legality of the contract of employment which itself depends partly upon the worker’s immigration status. Further, advice can make a difference for victims of forced labour by informing them about their rights and viable alternatives to their situation:

*Ten African care workers on work permits were referred by a trade union to a voluntary advice agency when it was discovered that they were being forced to work long hours on night shifts. They had been informed by the employer that they had no choice and would otherwise face deportation. They were advised firstly about their immigration position and also that they could apply to change employer. They chose not to pursue any case against the employer for fear of repercussions. Instead they actively pursued a change of employer and obtaining an extension of stay in the UK without bringing any challenge against their employer.*

## **5.2 Linkages between victim protection and law enforcement**

Protection of actual and likely victims of exploitation is central to international standards regarding migrant workers. An example of such a Convention is the United Nations Convention on the Protection of Rights of All Migrant Workers and their Families, 1990, which is the most comprehensive instrument on migrant workers, but has not yet been ratified by the United Kingdom. The ILO Migrant Workers (Supplementary Provisions) Convention No. 143 (1975), ratified by 18 countries, not including the United Kingdom, provides that all workers shall enjoy equality of treatment in respect of rights arising out of past employment, even if they have an irregular migration status:

*(T)he migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits (art. 9.1).*

However, the protection of migrant workers has not so far been addressed as a central issue in UK legislation and policy on migration, forced labour and trafficking. For instance, in the 2004 by the Immigration and Asylum Act there is little focus on protection on victims of trafficking. Though the recent legislation is certainly a lot more comprehensive, a gap remains between legislation and support structures. The only current protection available in the UK consists a safe

house run by the Poppy Project, funded by the Home Office. This shelter had a total of twenty-five spaces, which are reserved exclusively for women that are victims of trafficking.

The lack of provisions on victim protection help to explain why assistance to victims of forced labour encounters many obstacles, as illustrated by the interviews with employees of organisations and institutions who were in a position to detect forced labour and exploitation of migrant workers and provide some kind of assistance. The most important problems encountered by these are linked to immigration status and the absence of an efficient complaint mechanism, which obstructs several organisations and institutions in providing assistance to victims of forced labour and bringing forced labour cases to the attention of relevant authorities. In addition, the lack of enforcement means that few cases of forced labour are taken to court.

The Health and Safety at Work Act covers all workers, independent of immigration status. However, a worker needs to prove he/she was employed to be covered by section 2 of the Health and Safety at Work Act 1974, General duties of employers to their employees. This can be very difficult for an irregular migrant, but also a regular migrant worker. In order to prove employment, official documentation is needed, such as payment slips. Therefore, for those without contracts, who are paid cash, or have a fraudulent contract, it can be difficult to file a case against an employer on health and safety grounds.

Immigration status also influences inspection of employment premises. In the case of a complaint about health and safety issues, the HSE inspectors use a bottom-up approach: If there has been no fatality, inspectors will start their investigation by talking to the worker in question, then to co-workers, then to management, and so on. However, investigations are hampered by the fact that irregular migrant workers simply disappear from the scene, as they are afraid of arrest, deportation, or job loss. In order to find a solution to this problem, HSE has started giving construction inspectors training in Polish so that they can tell the workers they're not interested in migration status, only health and safety.

A problem encountered by the HSE, as well as by the trade unions and CABx, is that when they identify a person who is being exploited or controlled in some way by an employer or an agent, there are no enforcement powers that allow them to take action, as illustrated by the following cases:

*An HSE inspector gave a talk to construction workers about health and safety issues. A worker said 'I know all this, if I complain my employer he's going to sack me, what can you do about that?' The inspector commented: 'The answer is, I can't do anything'.*

*A trade union member told of workers in contract cleaning signing a statement complaining about intimidation by supervisors and not being paid for overtime worked. They expected that someone else would have the power to intervene. It is not so much that the trade union is prevented by law from approaching the employer. It is more that they have no right to do so, nor (more importantly) any powers to either enforce rights or take cases to tribunals.*

CABx are in the same situation as trade unions, though that of the HSE, a government authority, is slightly different. In the case of the HSE, the latter can prosecute for criminal negligence, resulting in a fine. The worker can then start, parallel to the criminal case, a civil case, although this is subjected to proof of employment.

The main weakness of current employment law enforcement is, however, that it relies mostly on the workers themselves making Tribunal claims or testifying. Currently only a regular migrant is able to denounce forced labour practices, and even then (for Work Permit holders, for example) this may expose them to the risk of dismissal and possible expulsion. However, if investigations were more intelligence-led, the information from trade unions, CABx, HSE and others could be used more successfully.

### *Control and monitoring of recruitment agencies*

Enforcement is also an issue regarding the monitoring of recruiters. The Transport and General Workers Union has noted that the success of the Gangmasters Act ‘will depend on the quality of the enforcement regime it inspires’ (TGWU undated, p. 2). In its two reports on the operation of gangmasters (Parliamentary Select Committee on the Environment, Food and Rural Affairs, 14<sup>th</sup> Report session 2002-03, and 8<sup>th</sup> Report session 2003-4) the EFRA Committee examined the general problem of enforcement, in relation to both employment and criminal law. Overall, the Committee saw the abuses within the gangmaster industry as a product of the failure to enforce legislation covering the employment of temporary labour. Reviewing the framework for enforcement, the EFRA Committee identified 12 distinct areas of official activity, 10 pieces of different regulatory legislation, and eight separate agencies with responsibility for enforcement, in addition to actions taken by individual workers to complain to an Employment Tribunal.

The two principal findings of the Committee were that there is an acute lack of research and data on the numbers and scale of gangmaster employment, and that enforcement is spread between too many different government agencies thus inhibiting efficient action. The lack of enforcement means that workers caught in situations of forced labour and exploitation may be short of protection.

The Committee’s overall conclusion was that ‘Whilst we welcome the steps taken by enforcement agencies [...] we are concerned that the government (a) does not have the data needed to know whether enforcement is having a significant impact, and (b) has not put in place structures which ensure co-ordination in policy making and enforcement. We strongly urge it to develop a greater sense of urgency about the problem: to streamline the number and structure of bodies addressing the issue; to make a single minister responsible’ (Parliamentary Select Committee on the Environment, Food and Rural Affairs, 14<sup>th</sup> Report session 2002-03 691] 8<sup>th</sup> Report session 2003-2004, para 46).

Some related problems identified in the Report, include:

- Difficulties in proving a criminal offence. Although some cases in which an employer withholds or confiscates documents may be prosecuted as theft, in others it will be difficult to prove that the employer intended to deprive the worker of the document



permanently, in the face of a defence argument that the employer had taken the document into safe keeping.

- The reluctance of many migrant workers to come forward, either as claimants or witnesses, because they fear they will be arrested for immigration offences, and deported.
- The difficulty – for both worker and employer - of knowing whether an individual may legally work. The Immigration Law Practitioners Association has noted that immigration rules are complex, leading to a difficult assessment of a persons' immigration status, which cannot solely be based on a passport stamp. It gives the example of students, who may legally work for 20 hours a week during term, and full time in vacation, but whose passports are endorsed by the Home Office with a general restriction on employment. Another example of confusion is that of the distinction between an employee and a worker, the former having more rights than the latter, the UK being the only European country using it (TUC 2002).
- The small number of cases taken to employment tribunals by migrant workers in temporary employment. The reasons include: cost (legal aid is not available); contracts may be unenforceable because they are illegal; workers in an undocumented status may be reluctant to initiate legal proceedings which may lead to their arrest for an immigration offence.
- Weak enforcement of criminal law for offences committed in the context of forced labour. Although many serious abuses committed by employers – theft of documents, assault and blackmail - are offences under UK criminal law, competing police priorities and limited resources, combined with evidentiary problems, have meant that few cases are prosecuted.
- Difficulties in establishing an employer's responsibility for, e.g. dangerous working conditions where the contractual, and sub-contractual, relationships are unclear.
- Language barriers which make it difficult for migrant workers to understand and exercise their rights.

### **5.3 Policy dilemmas**

The Government has made a commitment to curbing migrant labour exploitation. The Gangmaster Act reflects this commitment, and fills a gap in UK law; the Act may also come to be used as a model by other countries faced with similar challenges. It has also introduced new legislation, to bring the UK into conformity with international law on trafficking of human beings. A new Serious and Organised Crime Agency (SOCA) has been created, with wide powers to investigate human trafficking as well as drug smuggling, fraud and other transnational offences

While it is too early to make any assessment of how effectively these two pieces of legislation will be enforced, implementation will be certainly affected by the way in which an important policy dilemma is resolved. It concerns the balance, which should be struck between enforcing immigration control and ensuring protection for the victims of forced and exploitative labour. In fact, the possibility of prosecution for immigration offences rather than for breaches of employment law can, it seems, make migrants more open to abuse. Some immigration solicitors believe that because it can be difficult to meet employers' requirements, migrants are more likely to take employment with more unscrupulous employers. This has recently become apparent with

the Government's attempt to strengthen controls on illegal working by tightening requirements on employers on 1 May 2004. Community organizations and lawyers reported widespread confusion, with workers leaving employment and employers sacking workers irrespective of whether they fell foul of the legislation or not.

Available estimates suggest that migrants typically make up no more than half of the work force in those sectors most vulnerable to exploitation<sup>54</sup>. This figure is likely to decrease with the recent admission of Poland and other eastern European States to the EU. The policy set out in the Secure Borders, Safe Haven White Paper nonetheless places immigration control at the centre of action against illegal and exploitative labour. Since illegal migration is inextricably linked to labour exploitation, strengthening immigration enforcement is given priority, as the right way to tackle forced labour. This focus on migration control is perhaps reflected in the budget cuts experienced by the Health and Safety Executive for example, which is able to play a considerable role in combating forced labour and other severe exploitation.

This conflation of immigration control and employment protection has created an unfortunate situation in which the enforcement of immigration controls and the protection of migrant workers against exploitation have come to be seen as the two sides of a single coin. The resulting dilemma was clearly articulated by the Joint Council for the Welfare of Immigrants in a February 2004 statement on the Morecombe Bay Tragedy and the Licensing of Gangmasters: 'the protection of workers' rights should not be seen as an instrument for enforcing immigration controls, since this would undermine the confidence of workers that the legislation is capable of providing the protection they need.' The legislative framework for the protection for victims is weak, leading to a status of possible offenders instead of victims, which hampers efficient law enforcement.

To be effective, enforcement of immigration control – on the one hand - and of criminal and employment law, on the other, must be separately pursued. Only if this is done will workers in situations of forced labour be willing to come forward, report abuses, and assist police in their investigations and regulatory authorities in their inspections.

## **6. CONCLUSIONS AND RECOMMENDATIONS**

This study has shown that the UK government has done much to combat forced labour as an outcome of migration. It has recognised that exploitation of migrants, including forced labour, occurs in the country. Following this, the UK has swiftly introduced relevant legislation, such as the new Immigration and Asylum Act with an offence on trafficking for forced labour as well as Gangmaster Act to monitor labour contractors. However, though much has been done, there are still possibilities for better protection of migrant workers. The results of this study, as well as discussions with experts, have led to some, we believe, key recommendations. Some general recommendations are given, but most pertain to legislation on victims of forced labour and migrant worker exploitation, the enforcement of such legislation, as well as protection and assistance given to victims.

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<sup>54</sup> The JCWI (Statement 11 February 2004) estimated that 30% gangworkers are migrants. The TGWU [statement made in telephone interview]; estimated 40% in sectors covered by the Gangmaster Act. Operation Shark – led by Dept of Work & Pensions, raided all main fish processors in Scotland in December 2002 and found half workforce was illegally employed. See EFRA 8<sup>th</sup> Report para 12

## **General**

1. In a general sense, it is suggested that the UK ratifies the ILO Migrant Workers (Supplementary Provisions) Convention No. 143 (1975) as well as the United Nations Convention on the Protection of Rights of All Migrant Workers and their Families, 1990. This will provide a framework to protect all migrant workers in the UK, whether regular or irregular.<sup>55</sup>

2. Furthermore, there is a lack of data on migrant workers and their situation in the UK. One study has been commissioned by DEFRA (A Study of Employment Practises in Agriculture and Horticulture Industry and related Packhouse an Food Processing Sectors) Though this study attempts to fill this gap, more research is needed. It would be useful, for example, to include ethnicity in data collection by the HSE. Such data could be used for the drafting, amending and enforcement of appropriate legislation.

## **Legislation**

3. The UK's anti-trafficking legislation, contained under the Immigration Nationality and Asylum Act, is a novel approach in the European context. The focus of the trafficking offence is, however, on the migration aspects, rather than on the forced labour and employment related aspects. Care must be taken that the trafficking legislation is not used to further restrict the basic human rights of migrants with irregular status. The focus of the anti-trafficking legislation should be on forced labour as a serious crime, which must be prosecuted.

4. It appears that a more careful balance has to be struck between the control of immigration on the one hand and the protection of migrant workers, including victims of forced labour, on the other hand. The study has shown many incidents where the immigration status of workers was used to coerce them into to work or services. To prevent abuse by employers, regulations such as tying work permit to one specific employer should be altered to provide the migrant with more freedom to leave employment on reasonable grounds. In a general sense, in order to protect migrant workers, it is advisable to separate immigration control and rights protection.

5. Deterrence is crucial in preventing forced labour. However, employers must be made aware of legislation. Therefore awareness raising among employers should take place in order to avoid the discrimination effects currently experienced by foreign work permit holders. Moreover, care should be taken not to close entry points into the labour market for migrants, which can force them into even more indecent work. Government authorities should work closely with employers' organisations on these issues.

6. The UK is commended for having recognised labour shortages and for having developed legal channels of migration to answer the demand for labour. Yet the impact of the SAWS programme in the Ukraine shows that, though legal channels of migration are used, there is still plenty of space for abuse. Monitoring these legal migration schemes for abuses of workers' rights rather

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<sup>55</sup> For more information on how to prevent forced labour and trafficking using ILO Conventions, see ILO Legal Guidelines.

than breaches of immigration rules will bring to light loopholes which can subsequently be addressed.

7. Further, though much progress has been made regarding the monitoring of gangmasters in agriculture, less attention has been paid to other types of agencies, such as private employment agencies, escort or au pair agencies that may also engage in fraudulent and abusive practice. Furthermore, effective implementation of the gangmaster legislation will need training of relevant authorities on the monitoring of recruitment agencies.<sup>56</sup> Consideration should also be given to cooperation with sending countries to ensure that agencies are not acting in one country in a manner which would be unlawful in the other.

8. Government authorities that monitor agencies and gangmasters should also make use of positive incentives. Though licensing is an important step, there are other, complementary, ways to discourage abuse. For instance, self-regulatory methods such as codes of conduct and adherence to professional associations could be used, and are already being used by many agencies. Moreover, rating, including black listing, of agencies and gangmasters according to performance will help to prevent migrant workers from falling into the hands of unscrupulous employers and agents. Incentives could be provided to motivate employers and agents to reach the highest rank. Again, close cooperation with employers' organisations and in particular the business associations of private recruitment agencies is highly recommended. The Code of Practice for labour providers drawn up by the Temporary Labour Working Group<sup>57</sup> is a good starting point for such schemes.

### **Protection and assistance**

14. Protection of migrant workers should ideally start before they leave the country of origin, and continue in the country of destination. Awareness raising is a highly effective means to prevent forced labour, though it should be used in combination with the other strategies mentioned above. Increased awareness raising in the mother tongue language of the migrant workers could include topics such as rights, assistance, recruitment, migration and jobs, as well as the dangers of forced labour. Trade unions have started to get involved in this and should be encouraged to do so to a greater extent.

15. The UK has adopted relevant anti-trafficking legislation that offers protection to victims of trafficking for sexual exploitation. This could be extended to the protection of all victims of forced labour regardless of migration status and the type of exploitation suffered (labour or sexual exploitation). Migrants, as well as authorities and assistance organisations, need to be aware of these protection rights so that they can be enforced.

16. It is also suggested that efficient complaint mechanisms be put into place for victims of forced labour, but also for victims of labour exploitation abroad, as well as for victims of abusive

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<sup>56</sup> For more on information monitoring agencies on see SAP-FL/ILO (forthcoming) *Trafficking for Forced Labour: How to Monitor the Recruitment of Migrant Workers. Training Manual*, Geneva: ILO.

<sup>57</sup> Temporary Labour Working Group (November 2004), *Code of practice for labour providers to agriculture and the fresh produce trade*, [www.lpcode.co.uk](http://www.lpcode.co.uk)

recruitment practices. All should be able to present a civil case, regardless of immigration status in order to receive reinstatement of rights and compensation for damage suffered.

17. Measures should be taken to permit trade unions and other assistance organisations (including, but not only, the CABx) to play a stronger role in pursuing civil and penal claims. Indeed, it appears that they are the ones approached by migrant workers in forced labour but are unable to take these cases much further. The HSE and minimum wage inspectors could also play a more important role in the identification of possible forced labour practices and work more closely with relevant organisations and institutions.

18. Furthermore, a lack of funds appears a recurring issue in providing assistance to migrant workers. The HSE has experienced cut backs, assistance organisations have mentioned lack of funding for interpreters, and trade unions have mentioned it in relation to contributions by members only. Besides providing adequate funding, all relevant organisations and agencies could collaborate more with the aim of maximising their resources and competencies in a network of actors. Moreover, funding, as well as compensation from victims, could be obtained from the confiscated assets of offenders.

19. A confidential help-line is a practical way of ensuring migrants have access to assistance and complaint mechanisms. A free telephone legal advice service (notwithstanding problems of language) available through the union movement to advise migrant workers on their rights and where to go for help may make important differences in the lives of migrant workers. Employers may be willing to advertise such a service, particularly given that they are not usually in the firing line for any legal action if the contract is with the agency.

## **Law enforcement**

9. Enforcement of legislation appears to be one of the more important problems in combating forced labour exploitation. First of all, enforcement appears to spread out across different agencies. Closer cooperation between these agencies, aimed specifically at improving the protection of workers, is essential.

10. Those who are most likely to be in contact with victims of forced labour, particularly the police and the judiciary, should be trained on forced labour and trafficking issues. Training should encompass the recognition and identification of victims of forced labour, severely exploited migrant workers, abusive employers and agents, and the appropriate actions to be taken in different situations, including the prosecution of forced labour crimes.

11. Prosecution rates of offenders having engaged in forced labour are low and encounter some important obstacles. One important obstacle is that victims of forced labour are often scared to come forward as they fear arrest and deportation. This means that perpetrators go unpunished. It might be advisable to extend the protection given to victims of trafficking, including at least a temporary permit, to victims of forced labour.

12. Investigation into forced labour cases should be based on intelligence-led investigations to the extent possible instead of relying on the testimony of victims. The latter may be unwilling to bring the case forward because of fear of arrest and deportation and reprisals by the perpetrators.

Intelligence led investigations which take account of complaints from trade unions and other agencies are likely to result in more cases being brought against perpetrators.

13. The subcontracting chain can hinder prosecution as it diffuses responsibility for forced labour and can make it difficult to identify perpetrators, particularly in relation to the various types of contracts that exist in the UK. Clear guidelines should be set out for this, allowing for the prosecution of all perpetrators involved in trafficking and forced labour.

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## ANNEX

Interviews with workers to be unstructured in depth: what we need is the person's story from their point of view. Points that must be covered are:

- A description of their living and working conditions with respect to the forced labour indicators which are

### **Violence**

Physical violence

Sexual violence

Threats (e.g. immigration status, withdrawal of means of survival, against physical integrity of self or family)

### **Economic coercion and super-exploitation**

Fines for not fulfilling quotas

Forced withdrawal of wages for payment of "debt"

Excessive interest repayment on debt

Non-payment or extremely low payment of wages

### **Excessive dependence on employers/third parties**

Passport or i.d. card retention

Incarceration

Enforced social isolation

Prevention from organising

High personal dependence on employers/agents

Promotion of ignorance of rights

### **Other**

Confused employment relations – especially sub-contracting

Provision of grossly sub-standard living conditions

Please include a discussion of experiences of health and safety – i.e. were they working in dangerous conditions.

***NB: these may include past experiences of violence, super-exploitation etc that they have now escaped from.***

- How they came to be in this situation with a particular focus on
  - a) immigration status – working without documents and employer used this? Or tied by immigration regulations and unable to leave that employer and remain legal?
  - b) Relations with third parties (i.e. people profiting from their labour or presence – e.g. in payment for accommodation or traveling to the UK, or obtaining of false visas - who are not the employers) – did they owe money, favours or were they otherwise obligated to or in fear of a recruitment agent, labour provider or a gangmaster? Did ignorance or lack of contact with people "in the know" mean they signed up to unfair agreements either for employment or accommodation?

- c) Employment relations – were they sub-contracted labour? Was employment mixed up with personal/community relations? Or was there collusion between recruiters and employers?
  - d) Did they feel able to seek assistance from individuals or institutions? Why or why not? How did they manage to get out of a bad situation (if they did)? What do they think needs to be done to improve the situation?
  - e) Do they have any experience of racism in the UK?
- What do they think were their available options when they first came to the UK? Why did they leave their country of origin? Would they have done so had they known what was going to happen? What were their expectations? What opportunities would they like to have had when they first came to the UK, and how would this have been better than what happened to them?

It would also be useful to know the extent to which they think their experience is “typical” and if they think that people’s experiences vary by nationality or by immigration status.